TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~378.~~ 144

THE PLANTERS' BANK OF TENNESSEE, PLAINTIFF IN ERROR,

VS.

THE UNION BANK OF LOUISIANA.

FILED NOVEMBER 14, 1871.

No. ~~405.~~ 140

THE UNION BANK OF LOUISIANA, PLAINTIFF IN ERROR,

VS.

THE PLANTERS' BANK OF TENNESSEE.

FILED NOVEMBER 24, 1871.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

SUPREME COURT OF THE UNITED STATES.

No. 378.

THE PLANTERS' BANK OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

THE UNION BANK OF LOUISIANA.

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vs.

THE PLANTERS' BANK OF TENNESSEE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 United States circuit court, fifth circuit and district of La.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LA. } No. 4065.

Petition.—Filed September 11th, 1866.

To the hon. the judges of the U. S. circuit court for the fifth judicial circuit and district of Louisiana:

The petition of the Planters' Bank of Tennessee, a corporation duly established by the laws of the State of Tennessee, and a citizen of said State, respectfully represents:

That the Union Bank of Louisiana, a corporation duly established by the laws of the State of Louisiana, and a citizen of said State, is justly and legally indebted unto your petitioner in the full sum of ninety-nine thousand three hundred and ninety-four dollars and one cent,
2 with interest, costs of protest and of suit, for this, to wit:

That for many years past your petitioner has had commercial dealings with the said Union Bank of Louisiana in the way of collecting and remitting money, notes, drafts, bills of exchange, and other evidences of debt, and the proceeds thereof in money, in conformity to the usages and customs of banks and of merchants in this State and in the United States.

That, heretofore, to wit, before the institution of this suit, the said Union Bank of Louisiana, by reason of having collected moneys for petitioners, and by reason of petitioners having deposited large sums of money in said bank for the purposes aforesaid, became indebted unto your petitioner in a balance of account amounting to the said sum of ninety-nine thousand three hundred and ninety-four dollars and one cent, as will fully appear by reference to the account hereto annexed as part hereof, and marked "A;" which said balance of account the said Union Bank of Louisiana refuses to pay petitioner, though often requested so to do.

The plaintiff alleges and shows that the said defendant, the
3 Union Bank of Louisiana, has honored some of plaintiff's drafts, but declined to honor others, and that amongst the latter are three drafts, all dated Nashville, 30th September, 1863, all drawn at sight on said Union Bank in favor of W. A. Johnson & Co., New Orleans, your petitioner's agents here for collecting the same: One for seventeen thousand seven hundred and forty-one $\frac{38}{100}$ ($17,741.38) dollars; one for sixteen thousand four hundred and twenty-one & $\frac{61}{100}$ ($16,421.61) dollars; one for fifty-two thousand four hundred and eighty-three & $\frac{65}{100}$ ($52,483.65) dollars, all hereto annexed as part of this petition, and lettered B, C, & D; all of which were protested for non-payment on demand, as will appear by the protests thereof hereto annexed and made part hereof, and lettered E, F, & G. Your petitioner alleges that, on the said 30th day of September, 1863, the date of said three drafts, they had a balance to their credit in said Union Bank of Louisiana largely in excess of the amount of the said three drafts. That, on the 15th day of August, 1865, your petitioner made another draft on the said Union Bank for the sum of ten thousand three hundred and
4 thirty-one dollars and two cents, in *in* favor of D. Weaver, esq., cashier, and by him endorsed to W. A. Johnson and Co., or order, payable at sight. That said draft was presented at the said Union

Bank for payment, and payment thereof was refused; whereupon the said draft was duly and legally protested; all of which will more fully appear by reference to the said draft and to the protest thereof hereto annexed as part hereof, and marked H & I. For which said refusals to pay said four drafts above-described the said Union Bank of Louisiana became bound in law to pay interest on the same from the days of the respective protests thereof.

That the said Union Bank of Louisiana, is indebted to petitioner over and above the amounts expresses in the respective drafts hereinbefore described in the sum of two thousand four hundred and sixteen dollars and thirty-five cents, which said sum, with the amounts of the said drafts, make the amount specified and set forth in the said account "A," hereto annexed as aforesaid, of ninety-nine thousand three hundred and ninety-four dollars and one cent. And that interest is due on said
5 sum of $2,416.35 from the fourth day of September, 1865, which, although amicably demanded, the said Union Bank refuses to pay.

Wherefore your petitioner prays that the said Union Bank of Louisiana may be cited to appear and answer this petition; that, after due proceedings had, there be judgment rendered in favor of your petitioner, the Planters' Bank of Tennessee, and against the defendant, the Union Bank of Louisiana, in the full sum of ninety-nine thousand three hundred and ninety-four dollars and one cent., with five per cent. per annum interest on $86,646.64 from the thirtieth day of September, 1863; on $10,331.02 from the 29th day of August, 1865, and on $2,416.35 from the fourth day of September, 1865, with dollars cost of protest and costs of suit.

And your petitioner prays for all general and equitable relief.

(Signed) THOMAS J. DURANT,
Attorney of Petitioner.

Document A.—Filed September 11th, 1866.

PLANTERS' BANK OF TENN.,
6 $17,741.38.] *Nashville, Sept.* 30, 1863.

Geo. A. FRERET, *Cash'r Union Bank, New Orleans:*

Pay W. A. Johnson & Co., or order, seventeen thousand and seven hundred and forty-one $\frac{38}{100}$ dollars and charge to our acc't.

(Signed) D. WEAVER, *C'r.*

Document B.—Filed September 11th, 1866.

PLANTERS' BANK OF TENN.,
$16,421.61.] *Nashville, Sept.* 30, 1863.

Geo. A. FRERET, *Cash'r Union Bank, New Orleans:*

Pay W. A. Johnson & Co. or order sixteen thousand four hundred and twenty-one $\frac{61}{100}$ dollars, and charge to our acc't.

(Signed) D. WEAVER, *C'r.*

Document "G."—Filed September 11th, 1866.

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this
7 twenty-fifth day of November, in the year one thousand eight hundred and sixty-three, at the request of W. A. Johnson, esq'r, holder of the original draft or order, whereof a true copy is on the reverse hereof written, I, Walter H. Peters, a notary public in and for

this city, presented said draft or order at the Union Bank, in this city, to G. A. Freret, cashier, the drawer, and demanding payment, was answered that it could not be paid, as the amount, which was to the credit of the Planters' Bank, was seized by Maj. Gen'l Banks, & by his order paid over the 10th Sept., 1863, to A. Q. M. Capt. J. W. McClure, U. S. A.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft or order as against all others whom it doth or may concern, for all exchange, re-exchange, damages, cost, charges, and interests, suffered or to be suffered for want of payment of the said draft or order.

Thus done and protested in the presence of Octave L. Kernion
8 and Placide Bienvenu, witnesses.

(Signed) O. L. KERNION.
P. BIENVENU.
WALTER H. PETERS,
Not. Pub.

A true copy of the original on file in my office.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) WALTER H. PETERS,
Notary Public.

$16,421.61.] PLANTERS' BANK OF TENN.,
Nashville, Sept. 30th, 1863.

Geo. A. FRERET, *Cash. Union Bank New Orleans*:

Pay W. A. Johnson & Co. or order sixteen thousand four hundred and twenty-one $\frac{61}{100}$ dollars, and charge to our acc't.

(Signed) D. WEAVER, *Cas.*

"No. endorsement."

I, the undersigned notary, do hereby certify that the parties to the draft or order whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written
9 and addressed, dated on the day of the said protest, and served on them, respectively, in the manner following, to wit, a notice addressed to D. Weaver, cas., directed to him at Nashville, Tenn., was put in the post office in this city, on this day of protest, postage prepaid.

In witness whereof I grant these presents under my hand and seal of office, at the city of New Orleans, on this twenty-fifth day of November, A. D. 1863.

[SEAL.] (Signed) WALTER H. PETERS.

Document "C."—Filed September 11th, 1866.

$52,483.65.] PLANTER'S BANK OF TENN.,
Nashville, Sept. 30th; 1863.

G. A. FRERET, Esq'r',
Cas. Union Bank, New Orleans:

Pay W. A. Johnson & Co., or order, fifty-two thousand four hundred and eighty-three $\frac{65}{100}$ dollars, and charge the same to our acc't.

(Signed) D. WEAVER, *Cas.*

10 *Document "E."—Filed September 11th, 1866.*

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this twenty-fifth day of November, in the year one thousand eight hundred and sixty three, at the request of W. A. Johnson, esq., holder of the original draft or order, whereof a true copy is on the reverse hereof written, I, Walter Hicks Peters, a notary public in and for this city, and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft or order at the Union Bank in this city to G. A. Freret, cashier, the drawer, and, demanding payment, was answered that it could not be paid, as the amount which was to the credit of the Planters' Bank was seized by Maj. Gen'l Banks, &, by his order, paid over, the 10th Sept., 1863, to A. Q. M. Capt. J. W. McClure, U. S. A. Whereupon I, the said notary, at the request aforesaid, did protest, and, by these presents do publicly and solemnly protest, as well
11 against the drawer or maker of the said draft or order as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft or order.

Thus done and protested in the presence of Octave L. Kernion and Placide Bienvenu, witnesses.

(Signed) O. L. KERNION.
P. BIENVENU.
WALTER H. PETERS,
Not. Pub.

A true copy of the original on file in my office.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) WALTER H. PETERS,
Notary Public.

$52,483.65.] PLANTER'S BANK OF TENN.,
Nashville, Sept. 30th, 1863.

G. A. FRERET,
Cas. Union Bank, New Orleans:

Pay W. A. Johnson & Co. or order fifty-two thousand four
12 hundred and eighty-three $\frac{65}{100}$ dollars, and charge the same to our acc't.

D. WEAVER, *Cas.*

"No endorsement."

I, the undersigned notary, do hereby certify that the parties to the draft or order, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of the said protest, and served on them, respectively, in the manner following, to wit, a notice addressed to D. Weaver, cas., directed to him at Nashville, Tenn., was put in the post-office, in this city, on this day of protest, postage prepaid.

In witness whereof I grant these presents under my hand and seal of office, at the city of New Orleans, on the twenty-fifth day of November, A. D. 1863.

[SEAL.] (Signed) WALTER H. PETERS,
Notary Public.

Document "D."—Filed September 11th, 1866.

NOTA.—The above document could not, after diligent search and inquiry be found, and is, therefore, either lost or mislaid.
Attest:

13 *Document "F."—Filed September 11th, 1866.*

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on the twenty-fifth day of November, in the year one thousand eight hundred and sixty-three, at the request of W. A. Johnson, esq., holder of the original draft or order, whereof a true copy is on the reverse hereof written, I, Walter Hicks Peters, a notary public in and for this city, and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said draft or order at the Union Bank in this city, to G. A. Freret, cas., the drawer, and, demanding payment thereof, was answered that it could not be paid, as the amount which was to the credit of the Planters' Bank was seized by Maj. Gen'l Banks, and by his order
14 paid over, the 10th September, 1863, to A. Q. M., Capt. J. W. McClure, U. S. A.

Whereupon I, the said notary, at the request aforesaid, did protest, and, by these presents do publicly and solemnly protest, as well against the drawer or maker of the said draft, or order, as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests, suffered or to be suffered, for want of payment of the said draft or order.

Thus done and protested in the presence of Octave L. Kernion and Placide Bienvenu, witnesses.

(Signed) O. L. KERNION.
P. BIENVENU.
WALTER H. PETERS.
Not. Pub.

A true copy of the original on file in my office.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) WALTER H. PETERS,
Notary Public.

$17,741.38.] PLANTERS' BANK OF TENN,
Nashville, Sept. 30th, 1863.

GEO. A FRERET,
15 *Cas. Union Bank New Orleans:*

Pay W. A. Johnson & Co. or order seventeen thousand seven hundred and forty-one $\frac{38}{100}$ dollars, and charge to our acc't.

D. WEAVER, *Cas.*

"No endorsement."

I, the undersigned notary, do hereby certify that the parties to the draft or order, whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of the said protest, and served on them, respectively, in the manner following, to wit, a notice addressed to D.

Weaver, cas., directed to him at Nashville, Tenn., was put in the post-office in this city, on this day of protest, postage prepaid.

In witness whereof I grant these present' under my hand and seal of office, at the city of New Orleans, on this twenty-fifth day of November, A. D. 1863.

(Signed) WALTER H. PETERS,
Notary Public.

16 *Document "H."—Filed September 11th, 1866.*

10,331.02.] PLANTERS' BANK OF TENNES'EE,
Memphis, August 15th, 1865.

Pay to the order of D. Weaver, esq'r., cashier, ten thousand three hundred and thirty-one $\frac{02}{100}$ dollars.

D. A. SHEPHERD, *Cash'r.*

To the CASHIER OF THE UNION BANK OF LOUISIANA,
No. 859.] *New Orleans.*

[R. S., $0.02.]

(Written across the face:) No. 859. Ten thousand three hundred and thirty-one $\frac{02}{100}$ doll's.

(Endorsed:)
Pay W. A. Johnson & Co. or order.

D. WEAVER, *Cash'r.*

Document "I."

STATE OF LOUISIANA:

By this public instrument of protest be it known that, on this twenty-ninth day of August, in the year one thousand eight hundred and sixty-five, at the request of W. A. Johnson & Co., of this city, holders of the original check, whereof a true copy is on the reverse hereof written,

I, Pierre Charles Cuvellier, a notary public in and for this city,
17 and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, acting for and representing Walter H. Peters, also a notary public for this city and parish, duly qualified as such, and now temporarily absent, by legal authority, presented the said check at the Union Bank of Louisiana in this city to the cashier thereof, and, demanding payment, was answered that the said check could not be paid, as the amount which was to the credit of the branch of the Planters' Bank of Tennes'ee, Memphis, was seized by Major General Banks, and, by his order, paid over on the 10th of September, 1863, to Capt. J. W. McClure, A. Q. M. U. S. A.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said check as against all others whom it doth or may concern for all exchange, re-exchange, damages, costs,
18 charges, and interests, suffered, or to be suffered, for want of payment of said check.

Thus done and protested, in the presence of St. Colombe Davis and Antonie Conand, witnesses.

(Signed) S. C. DAVIS.
A. CONAND.

P. CHA'S CUVELLIER,
Not. Pub.

A true copy of the original on file in my office, which is stamped $0.25 c'ts.

In testimony whereof I grant these presents under my signature, and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[SEAL.] (Signed) P. CHA'S CUVELLIER,
Notary Public.

[5-c'ts I. R. stamp.]

10,331. 02.] PLANTERS' BANK OF TENNESSEE,
Memphis, August 15, '65.

[R. S. $0. 02.]

Pay to the order of D. Weaver, esq., cas'r, ten thousand three hundred and thirty-one $\frac{02}{100}$ dollars.

D. A. SHEPHARD,
Cashier.

To the CASHIER OF THE UNION BANK OF LOUISIANA,
No. 859.] *New Orleans.*

(Endorsed:)
Pay W. A. Johnson & Co. or order.

D. WEAVER, *Cash'r.*

I, the undersigned notary, do hereby certify that the parties to the whereof a true copy is above written, have been duly
19 notified of the protest thereof, by letters to them by me written and addressed, dated on the day of the said protest, and served on them, respectively, in the manner following, to wit:

In witness whereof I grant these presents, under my hand and seal of office, at the city of New Orleans, on this day of A. D, 186 .

Notary Public.

Citation.—Issued September 11*th*, 1866.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } No. 4065.

You are hereby commanded to summon the Union Bank of Louis-
20 iana, a corporation duly established by the laws of the State of Louisiana, and a citizen of the State of Louisiana, to comply with the demand of the Planters' Bank of Tennessee, a corporation duly established by the laws of the State of Tennessee, and a citizen of the State of Tennessee, contained in the petition of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days' after the service hereof, or judgment will be rendered against it by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of October, 1866.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans,
21 this 11th day of September, A. D. one thousand eight hundred and sixty-six, and of the independence of United States of America the 91st year.

[SEAL.] (Signed) CHA'S CLAIBOR'E,
By F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received Sept. 12th, 1866, and, on the same day, month, & year, served a copy of the within citation & petition of plaintiff accompanying the same on the Union Bank of Tennessee, the defendant named herein, by leaving the same at the office of said bank, No. 122 Canal street in this city, in the hands of Geo. A. Freret, he representing himself to be the cashier of said bank, the president of said bank being absent at the time of said service.

(Signed) M. EGANS,
D'y U. S. Marshal.

NEW ORLEANS, *September 12th*, 1866.

22 *Charter of Planters' Bank of Tennessee.*

An act to establish the Planters' Bank of Tennessee.

SEC. 1. *Be it enacted by the general assembly of the State of Tennessee*, That there shall be established a bank at Nashville, the capital stock of which shall be two millions of dollars, and shall be divided into shares of one hundred dollars each; and books for subscription thereof shall be opened on the first day of January, 1834, at the following places to wit: At Nashville, under the superintendence of Francis B. Fogg, Samuel G. Smith, Andrew Hynes, H. Petway, M. D. Cooper, James Erwin, Jos. Vaulx, John Williams, W'm M. Berryhill, E. H. Foster, Thomas Washington, George Crockett, J. P. Clark, John Shelby, and Foster G. Crutcher. At Columbia, under the superintendence of James Walker, William McNeil, J. B. Groves, D. P. Fuerson, E. W. Dale, and J. R. Plummer. At Carthage, under the superintendence of Robert
23 Allen, Jonathan Pickett, David Burford, Simon P. Hughs, and Andrew Allison. At Winchester, under the superintendence of James Campbell, W'm Knox, Mark Hutchins, James Robinson, and Hopkins L. Turney. At Athens, under the superintendence of Nathaniel Smith, Onslow G. Murrell, James H. Fyffe, James S. Bridges, Charles F. Keith, R. G. Meigs, David Claig, and John Crawford. At Greenville, under the superintendence of Valentine Sevier, John Dixon, Joseph Cutler, George Jones, and William Dixon. At Lebanon, under the superintendence of George W. Mabry, Joseph Johnson, Paulain Anderson, George H. Bullard, Robert L. Caruthers, and John S. Topp. At Lexington, under the superintendence of George Martin, James E. Jordan, Micajah Bullock, Gladen Goren, and W'm Mitchell. At Knoxville, under the superintendence of Solomon D. Jacobs, Dury P. Armstrong, James Park, Robert King, Ja's H. Cowan, Donald McIntosh, William C. Mynatt, David Bell, James G. M. Ramsey, and Michael Shetterly. At Paris, under the superintendence of James Cowan, Thomas
24 Crawford, John Cooney, N. Crockett, and John Gibbs. At Dresden, under the superintendence of John Ferreil, Alfred Gardner, James Moran, A. M. Hughs, and Dennis Cochran. At Huntingdon,

under the superintendence of Robert Murray, Ennis Uray, John Crockett, and John McKernon. At Trenton, under the superintendence of Moses Woodfin, Thomas Fite, James L. Totton, Thomas J. Caruthers, John H. Crisp, and H. D. Nelson. At Dyersburgh, under the superintendence of Alex. McCulloch, sen., Aquilla Alexander, W. L. Mitchell, and Speral Hall. At Troy, under the superintendence of Benjamin Totten, James H. Davis, Andrew Harris, and John B. Hubbard. At Perryville, under the superintendence of Curry Pettygrove, Jared S. Allen, James Dougherty, and Jacob Johnson. At Reynoldsburg, under the superintendence of Thomas K. Wyly, W'm H. Miller, Thomas B. Hudson, Henry H. Marable, Robert Rochell, and Edmond F. Willis. At Dover,
under the superintendence of Henry L Atkins, William Williams,
25 James Lee, C. C. Clements, and Cullen Bayless. A' Fayetteville, under the superintendence of W'm Dye, F. L. Kincannon, William F. Mason, Samuel Roseborough, Matthew Martin, A. T. Nicks, R. H. C. Bagley, W'm Bonner, Joseph Long, Ira McKinney, and Allen C. McEwen. At Pulaski, under the superintendence of Nathaniel C. Nye, Samuel Kercheral, John K. Yerger, John M. Bell, Andrew M. Ballentine, Geo. W. Martin, Joseph C. Rhea, Isaac Mason, Jefferson Oliver, E. M. Massey, and Robert B. Harney. At Savannah, under the superintendence of Lewis H. Broyles, James Erwin, John Houston, James Scott, and Orvill Harrison. At Purdy, under the superintendence of John T. Burtwell, Maclin Cross, and William S. Wisdom. At Lawrenceburg, under the superintendence of Martin Gaither, A. W. Bumpass, Thomas D. Davenport, Franklin Buchannon, William McKnight, jr., D. H. Stockton, and Joshua Bowdry. At Sommerville, under the superintendence of John
Brown, W. S. Gray, R. A. Parker, Asbury Crenshaw, and John
26 Cooper. At McMinnville, under the superintendence of Broomfield L. Ridley, *A. J. Marchbanks, W'm White, John Cain, Joel Mabry,* and Alex'r Shields. At Centreville, under the superintendence of Robert Charter, Henry Nixon, Robert Shegoy, Eli B. Hornbeak, John Philips, and Millington Easley. At Sparta, under the soperintendence of John Jett, Wayman Leftwick, William Glenn, James H. Jenkins, and Nathan Haggard. At Rutledge, under the superintendence of Benjamin Craighead, Hugh Houston, William E. Cocke, Robert Massengill, Luke Lea, jr., Pleasant S. Cocke, and David Barton. In the town of Clarksville, under the superintendence of Charles Minor, John H. Poston, James McClure, James B. Reynolds, Andrew Vance, and W'm F. Gray. In the town of Charlotte, under the superintendence of John Montgomery, George Smith, John G. Collier, John C. Napier, Benj. A. Collier, and W'm Hightower. In the town of Springfield, under the superintendence of Richard Cheatham,
George C. Conrad, Thomas Farmer, Thornton H. Cook, and
27 William Seal. At Jonesborough, under the superintendence of Nathan Gammon, John Green, William K. Blair, and Samuel G. Chester. At Blounville, under the superintendence of W'm Deery, Samuel Rhea, David Shaver, and E. R. Dulany. At Elizabeth, under the superintendence of A. M. Carter, David Nelson, Hiram Daily, and Robert W. Powell. At Shelbyville, under the superintendence of James Deery, Thomas Davis, Joseph Eakin, K. L. Anderson, and William Gilchrist. At Murfreesboro', under the superintendence of Charles Reidy, George A. Sublett, Bennett Smith, W'm R. Rucker, and Marmon Spence. At Bolivar, under the superintendence of Ezekiel P. McNeal, Walker Berry, John C. McCain, and Littleton Johnson. At Rogersville, under the superintendence of Nicholas Fain, Charles Coffin, Dicks Alexander, William Simpson, and Stockley D. Mitchell. At Gallatin,

Reference approved. D. URBAN. Clk.

under the superintendence of George Crockett, Daniel Saffarans, John H. Turner, A. D. Bugg, and James A. Blackmore. At Waynesborough, under the superintendence of James C. Alderson, Thomas M.
28 East, and Robert Robinson. In the town of Franklin, under the superintendence of Samuel Crockett, William G. Dickenson, William Manney, William Johnson, Erastus T. Collins, Micha'l Doyle, and Thomas Parks. And any three of said commissioners shall be sufficient to perform the duties of their appointments, and they shall keep the books open for subscription at least ten days, and the amount of the share or shares so subscribed, shall be paid for in gold or silver, as follows, that is to say, five dollars upon each share, to the proper commissioners, at the time of subscribing; five dollars on each share to the proper commissioners, on the first Monday of March next, and ninety dollars to the directors of the bank, for the time being, in such instalments as they may from time to time require. *Provided*, that if a larger amount than two millions be subscribed, the excess shall be deducted from the largest subscriptions, in such manner that no subscription shall be reduced while any one remains larger; and if the full amount of two millions should not be subscribed during the time, at which the book for subscriptions is authorized to be kept open, then it shall be lawful for
29 the directors of the Planters' Bank to cause books to be opened at Nashville, at such time or times as they may think proper, for the subscription of the balance of said capital stock.

SECTION 2. *Be it enacted*, That the subscribers to said bank, their successors and assigns, shall be, and they are hereby, created a body corporate and politic, in law and in fact, by the name and style of the Planters' Bank of Tennessee, and shall so continue until the first day of January, 1863, and no longer, and by the name and style aforesaid they shall be, and are hereby, made able and capable in law to have, purchase, receive, possess, enjoy, and retain to them and their successors lands, rents, tenements, hereditaments, goods, chattels, and effects of what kind, nature, or quality soever to an amount not exceeding in the whole two millions of dollars, exclusive of the capital stock aforesaid, and the same to sell, alien, devise, grant, or dispose of, to sue and be sued, plead and be impleaded, answer and be answered unto, defend and be defended in all courts of record or any other place whatever; and also to make, have, and use a common seal, and
30 the same to break, alter, and renew at their pleasure; and also to ordain, establish, and put in execution such by-laws, ordinances, and regulations as shall seem necessary and convenient for the government and management of said corporation, not being contrary to the constitution and laws of this State or of the United States; and generally to do and execute all acts, matters, and things which a corporation or body politic in law may and can lawfully execute.

SECTION 3. *Be it enacted*, That, as soon as the subscriptions shall be closed at Knoxville and the other places mentioned in this act, the commissioners appointed at those places shall respectively transmit and deliver to the commissioners appointed in Nashville a list of the several subscribers at said places, together with the full amount of subscription money by the commissioners received as aforesaid, for which amount the receipt in writing of said commissioners in Nashville, or a majority of them, shall be sufficient acquittance and discharge to the persons respectively paying the same; but if, on examination of the books, the whole amount shall not have been subscribed, said
31 books shall be continued open at such times and places as the directors shall think proper, until the same shall be subscribed for.

SECTION 4. *Be it enacted*, That, for the due administration of the affairs of said bank, there shall be eleven directors, citizens of this State, who shall be elected annually, at the banking house in Nashville, on the first Monday in March, by the stockholders; and the directors, at their first meeting after each election, shall appoint one of their body president of said bank; and, provided that if, at any time, it should so happen that an election of directors should not be made upon any day when, in pursuance of this act, it ought to have been made, the said corporation shall not for that cause be deemed dissolved; but it shall be lawful at any other time to make such election, within thirty days thereafter, in such manner as shall have been regulated by the laws or ordinances of said corporation; and, in case of the death, resignation, or removal from the State of any director, his place shall be filled by the remaining directors, or a majority of them, until the next general election.

SECTION 5. *Be it enacted*, That the directors, for the time being,
32 shall have power to appoint such officers, clerks, and servants under them as shall be necessary for executing and transacting the business of said corporation, and to allow them such compensation for their services as shall be reasonable; and shall be capable of exercising all such other powers and authorities for the well governing and ordering the affairs of said corporation as shall be prescribed and provided by the by-laws, regulations, and ordinances of the same.

SECTION 6. *Be it enacted*, That if five thousand shares of the capital stock of said bank shall have been subscribed by the first of March, 1834, an election shall be held for directors, the commissioners appointed in Nashville giving thirty days' notice in the Nashville newspapers, who shall proceed forthwith to organize said bank, and continue in office until the next stated election, and until a new board shall be formed; said election to be held by said commissioners at Nashville.

SECTION 7. *Be it enacted*, That the board of common school commissioners, or the county courts having the charge of the common school funds in any of the counties in this State, who have not availed
33 themselves of the authority granted to them to invest their funds in the stock of the Union Bank of the State of Tennessee, of trustees of any academy, be, and they are hereby, authorized to subscribe in the Planters' Bank to the full amount of the funds which they may have on hand at the time of subscribing; and said school commissioners or county courts, of trustees of academies, as the case may be, shall, at the time of subscribing for stock as aforesaid, pay to the commissioners the full amount of stock so by them subscribed; and if, at the time of making subscription as aforesaid, all the funds belonging to the schools or accademies shall not be in the hands of said commissioners, or county courts, or trustees of academies, then it shall be lawful for them, and it shall be their duty, at any subsequent times when they may collect the funds, to subscribe for stock in the Planters' Bank to the full amount of the funds then in their possession, and said stock so subscribed shall be in addition to the capital stock of the Planters' Bank, as provided in the first section of this act.

SECTION 8. *Be it enacted*, That the following shall constitute the fundamental articles of said corporation:

34 ARTICLE 1. All stockholders owning ten shares and under shall be entitled to one vote, and the owners of more than ten shares shall be entitled to one vote for every ten shares, so that the whole amount of votes of any one stockholder shall not exceed thirty. No

vote shall be given by proxy, unless such proxy shall have been appointed one month before the election: *Provided*, That no director shall receive or vote as proxy for any stockholder; *And provided also*, That no person shall be authorized or empowered to vote as proxy for any stockholder unless such stockholder shall first have taken an oath, before some magistrate, that he is bona-fide owner of the shares: *And provided also*, That no person or persons in whose name stock has been subscribed, or to whom it has been transferred, and who hold it in trust for a shareholder, shall be entitled to vote for directors where the stock owned by his cestui que trust, in his own name, will allow him thirty votes; but where the stock of the cestui que trust, standing in his own name, is not sufficient to allow him thirty votes, then, and in that case, his trustee shall be entitled to vote any number of votes authorized by his stock: *Provided*, The number of votes, when
35 added to the cestui que trust, does not exceed thirty, and the commissioners or judge of the election are hereby authorized to examine, on oath, any person offering to vote as to whether he is the bona-fide holder of the stock or not.

ARTICLE 2. None but a stockholder, being a citizen of the State of Tennessee, shall be eligible as a director, and no director in any other bank, in this or any other State, or partner in trade of such director, nor two or more persons trading in partnership at the same time, shall be eligible to serve as a director.

ART. 3. No director shall be entitled to any emolument unless the same shall be allowed by the stockholders at a general meeting; but the directors for the time being shall have power to make such compensation to the president of the bank for his attendance at the bank, and superintending its concerns, as shall to them seem reasonable.

ART. 4. Not less than five directors shall constitute a board for the transaction of business, of whom the president shall always be one, except in case of sickness or necessary absence, in which case a president pro tem. may be appointed by the directors present.

ART. 5. A number of stockholders, not less than ten, holding
36 at least 500 shares, shall have power at any time to call a general meeting of the stockholders, as shall also a majority of the directors, for purposes relative to the institution, giving at least six weeks' notice in two newspapers of general circulation, specifying the object of such meeting.

ART. 6. The cashier of the bank hereby established shall execute his obligation with good security, payable to the president and directors of said bank and their successors in office, for the faithful performance of his duty as cashier, with such covenants, and in such penalty as such president and directors shall deem requisite; and said president and directors shall have full power to require like bond and security from any other of the officers, with like conditions and covenants.

ART. 7. The lands, tenements, and hereditaments, which it may be lawful for said corporation to hold, shall be only such as shall be requisite for its immediate accommodation for the transaction of its business, and such as have been bona-fide mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of ordinary banking business, or purchased at sales upon judgments or decrees rendered in favor of said bank.

37 ART. 8. The stock of said bank shall be assignable and transferable only on the books of said bank, according to such rules and restrictions as shall be prescribed by the president and directors; and it is hereby expressly provided that any stockholder who shall

transfer all his, her, or their stock in said corporation, shall immediately cease to be a member of said company, and that any person or persons who shall accept a transfer of any share or stock in the said bank, shall thereupon become a member or members of said corporation.

ART. 9. All bills, bonds, notes, and every contract or engagement on behalf of the company, shall be signed by the president and countersigned by the cashier; and the funds of the company shall in nowise be held responsible for any contract or engagement, unless the same shall be executed as aforesaid.

ART. 10. The bills obligatory and of credit, under the seal of said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereon, as promissory notes are now transferable, and the assignee or assignees thereof shall be able to bring or maintain an action thereon in his, her, or their names; and bills or notes
38 issued by order of said corporation, signed by the president and countersigned by the cashier thereof, promising the payment of money to any person or persons, his or their order, or the bearer, though not under the seal of said corporation, shall be binding and obligatory upon the same, in like manner and with like effect as promissory notes now are, and those payable to bearer shall be negotiable and transferable by delivery thereof only; and all bills or notes, whether under seal or otherwise, at any time discounted by said corporation, shall be, and they are, hereby placed upon the same footing as foreign bills of exchange, so that the like remedy shall be had for the recovery thereof against the drawer or drawers, maker or makers, endorser or endorsers thereof, and with like effect, except so far as relates to damages.

ART. 11. The said corporation shall not directly or indirectly demand, take, or receive, by way of discount or for interest, a greater sum or sums than the following rates, that is to say, for all paper discounted at said bank, not having more than ninety-three days (including days of grace) to run until due and payable, shall be discounted at six per cent. per annum; over ninety days, and under six months and
39 three days (including days of grace) until due and payable, not more than at the rate of seven per cent. per annum; and for all paper discounted, having more than six months and three days (including days of grace) to run before due and payable, not more than at the rate of eight per cent. per annum; and said corporation shall not, under any pretence, discount any paper which does not fall due within twelve months and three days (including days of grace) from the time when such paper may be offered for discount: *Provided*, This article shall not be so construed as to prevent said bank from demanding and receiving a reasonable premium for exchange in addition to the interest on bills or notes payable at a point beyond the limits of this State.

ART. 12. No stockholder in said bank shall be entitled to any other or greater accommodation in said bank, by pledge of his stock, than any other individual not a stockholder.

ART. 13. Half-yearly dividends shall be made of so much of the profits as shall appear to the directors advisable; and once in every year, at the meeting to be annually held for the election of directors, there shall be exhibited an exact and particular statement of the gen-
40 eral accounts of said corporation; and if any stockholder shall be in default, or shall have failed to pay any sum or sums by him, her, or them subscribed, the party failing shall forfeit all payments previously made to the bank, together with any dividend which may have accrued, should the board of directors so direct.

ART. 14. The said corporation shall not, at any time, suspend or refuse payment of any of the notes, bills, or obligations thereof, nor of any money received on deposit in said bank, when demanded by the holder or depositor, at the place where the same is made payable, in gold or silver; and, in case of such refusal, the holder of such note, bill, or obligation, or the person or persons entitled to receive such money deposited as aforesaid, shall be respectively entitled to interest from the time of such demand and refusal, at the rate of ten per cent. per annum until paid.

SECTION 9. *Be it enacted*, That, in consideration of the privileges granted by this charter, the bank agrees to pay to the State, annually, one-half of one per cent. on the amount of the capital stock paid in by the stockholders.

SECTION 10. *Be it enacted*, That the bills which it shall be lawful for such corporation to issue, shall not be for a less sum than five dollars.

41 SECTION 11. *Be it enacted*, That the directors shall keep fair and regular minutes of their proceedings, and on any question where one director shall require it, the yeas and nays of the directors voting shall be duly entered.

SECTION 12. *Be it enacted*, That said bank may issue bills or notes payable on demand at the bank in Nashville; and also at such banks of respectable standing, in any other State in the Union, as the board of directors may deem expedient and proper.

SECTION 13. *Be it enacted*, That it shall be the duty of said corporation to keep a book in which a statement at the end of every year shall be entered of the amount of capital stock, the amount of real estate, the amount of funds upon hand, and the amount of debts due said bank, and also the amount of notes, bills of obligations, due from said bank, and the amount of money upon deposite, which book shall be opened for the inspection of any stockholder who wishes to examine the same.

SECTION 14. *Be it enacted*, That it shall be lawful for any one or more of the directors of said bank to examine and inspect the books and accounts of said bank at any time, whether the board of direc-

42 tors be in session or not.

SECTION 15. *Be it enacted*, That the bills and notes issued by this bank, payable either at the bank in Nashville or at any other bank in the United States, shall in no case exceed one hundred per cent., above the amount of the capital stock paid in.

SECTION 16. *Be it enacted*, That if the cashier or any other of the officers, agents or servants of said corporation, shall embezzle, and, without authority from the president and directors of said bank, appropriate any of the funds of said corporation to his own use, with intent to cheat and defraud the president, directors and company of said bank, or shall fail to make correct entries, or shall make false entries upon the books of said bank, with intent to defraud said bank, or any other person whatsoever, said officer, agent, or servant, of said bank, shall be held and deemed guilty of felony, and shall, upon conviction thereof, be sentenced to confinement in the jail and penitentiary of this State, for a period of not less than five nor more than twenty years.

SECTION 17. *Be it enacted*, That whenever the legislature may be of opinion that the charter of the corporation hereby granted shall

43 have been violated, and that the same has been forfeited, it may be lawful, by joint resolution, to direct a scire facias to issue from the supreme court of errors and appeals, in the name of the State

of Tennessee, calling upon said corporation to show cause why the charter hereby granted shall not be declared forfeited; and the service of said scire facias upon the president or any two of the directors, shall be deemed a sufficient service upon said corporation; and it shall be lawful for said court, and they shall have full power upon the return of the scire facias being made known, to examine into the truth of such alleged violation, and if such violation be made to appear, then to pronounce and adjudge that the said charter is forfeited and annulled: *Provided, however,* That the said scire facias shall specify with precision the nature of the complaint, and grounds upon which the forfeiture is claimed; and every issue of fact, which may be found between the State and said corporation, shall be tried by a jury to be empannelled by said court for that purpose.

SECTION 18. *Be it enacted,* That if at any time it shall be made appear by scire facias, or any other judicial proceedings, in any of the
44 courts in this State, that the said corporation shall have violated this charter, by exceeding the amount of issues herein authorized to be made, or by extending, or giving to stockholders discounts, or other banking accommodations, by virtue of their stock, beyond what is given to others not being stockholders, then, and in either of the above cases, the directors voting for, or who have sanctioned such violations of their charter, shall be responsible in their private property for any loss or damage which may be sustained by any person in consequence of such violation; and in case the property real and personal of such directors, may not be sufficient to compensate for the injuries which may have thus been sustained by note holders or others, then and in that case the stockholders shall be liable in their property, both real and personal, to an amount equal to the stock by them respectively held, to make up such deficiency: *Provided, however,* That said individual liability shall not be enforced, against either director or stockholder, so long as said bank shall continue to redeem its notes or pay its debts at its usual place of doing business, nor until judgment shall have been regularly obtained against said bank and
45 execution shall have been duly returned unsatisfied, and that no property of said corporation can be found to satisfy the same.

SECTION 19. *Be it enacted,* That the obligation required in the eighth section of this act to be taken from the cashier and other officers of said bank shall be placed in the hands of the president of the bank, and shall be good and sufficient in law or equity to enable said bank to recover of and from said cashier or other officer and their securities all sums of money which may come to their hands in the discharge of their official duties; and for any default, neglect, fraud, or failure on part of said officers, suits may be brought on said bond or bonds, obligation or obligations, from time to time, and recoveries thereon had for all sums due on account of any default, neglect, fraud, or delinquency on part of said cashier or other officer, without regard to the amount of any penalty that may be mentioned in said bonds or obligations.

SECTION 20. *Be it enacted,* That the bonus agreed to be paid by the Planters' Bank to the State shall be received annually as it falls due by the treasurer of Middle Tennessee, and the same is hereby appropriated to the common schools; and it shall be the duty of
46 said treasurer annually to divide the same among the counties in this State according to free white population: *Provided,* That if, at the expiration of three years from the time the bank goes into operation, the whole stock shall not have been paid in, that the bonus shall be calculated upon two million of dollars.

SECTION 21. *Be it enacted*, That so soon as two hundred thousand dollars of stock shall be subscribed and paid in, and said corporation shall be organized, it shall be the duty of the president and directors to establish a branch of said bank at Palaski, in Giles County, for the purposes of discount and deposit, and upon the same terms and in the same manner as shall be practised at the *the* principal bank, and to commit the management of said branch and the making of said discounts to persons to be chosen as hereinafter directed.

SECTION 22. *Be it enacted*, That at the time the board of directors of the Planters' Bank shall determine to establish said branch as above required, it shall be their duty forthwith to appoint twelve directors to manage the affairs of that branch, citizens of this State, eight of
47 whom shall reside in Giles County, five of whom shall constitute a quorum to do business, and said directors shall choose from among themselves the president; and the said board of directors shall be subject to all such rules and regulations as may be adopted by the mother bank for the government of said branch not inconsistent with the provisions of this charter or contrary to law; and said board of directors of the mother bank shall appoint a cashier for said branch, and said cashier shall give such bond and security as shall be required by the directors of said Planters' Bank; and said board of directors of said branch shall have full power, and it is hereby made their duty, to fill all vacancies which may occur in their own body by death, removal, or resignation.

SECTION 23. *Be it enacted*, That the said Planters' Bank may issue bills or notes, payable on demand at said branch, as the board of directors may deem expedient and proper.

SECTION 24. *Be it enacted*, That it shall be lawful for any one or more of said principal bank or said branch directors to examine and
48 inspect the books and accounts of said bank and of said branch of which he or they may be directors, whether the board of directors to which he or they may respectively belong be in session or not; and it shall be lawful for the president, or one or more of the directors of the principal bank to examine and inspect the books and accounts of said branch at any time.

SECTION 25. *Be it enacted*, That if it should be found at any period after the expiration of two years from the establishment of said branch that said branch shall have yielded no profit to the stockholders of said Planters' Bank, the directors of the mother bank, with the concurrence of a majority of the directors of said branch, may wind up the concerns of said branch, and take in the fund.

SECTION 26. *Be it enacted*, That a branch of said Planters' Bank shall be established at Athens, in McMinn County, at the same time and under the same rules, regulations, and restrictions for its government as are herein prescribed for the government of the branch at Pulaski; and that said president and directors be, and they are hereby, authorized and empowered, under this charter, to locate at Paris, in the county
49 of Henry, if they think proper to do so: *Provided*, That nothing herein contained shall prevent any future legislature from establishing a branch of said bank in the mountain district.

F. W. HULING,
Speaker of the House of Representatives.
D. BURFORD,
Speaker of Senate.

Passed Nov. 15, 1833.

Certificate attached to charter.

[Ten cents internal revenue stamp.]

STATE OF TENNESSEE, EXECUTIVE DEPARTMENT,
Nashville, December 21st, 1863.

I, Edward H. East, secretary of the State of Tennessee, do hereby certify that the foregoing acts of the legislature of Tennessee, hereto attached, are true and correct copies from printed acts of the statute laws of Tennessee.

In testimony whereof I have hereto set my hand, and affixed the great seal of the State of Tennessee, at the place and date above written.

By order of the governor:

[SEAL.] EDWARD H. EAST,
Secretary of State.

50 *The bank code.—Filed September the 11th*, 1866.

An act to reform and regulate the business of banking in Tennessee.

SECTION 1. *Be it enacted by the general assembly of the State of Tennessee*, That every bank, which now is, or may hereafter be, incorporated under the authority of the State, shall be subject to the liabilities and governed by the rules and provisions contained in this act.

SECTION 2. *Be it further enacted*, That no bank in the State shall issue any note not payable on its face at the counter where issued; nor shall any bank pay out any note not payable at its counter. *Provided:* That any principal bank may pay out the notes made payable at its branches, but such branch notes shall, by law, be also payable at the counter of the principal bank; and the principal bank is to be regarded as issuing all its notes under the word "issue" used in the second line of this section, and no bank note shall be issued of a less denomination than five dollars.

51 SECTION 3. *Be it further enacted*, That the capital stock of each bank in this State shall be paid in coin, and that no substitute or equivalent shall be received in lieu thereof; and no part of capital stock of any bank shall be sold or transferred until the whole amount shall have been paid in; nor shall any loan be made to any stockholder until he shall have paid the full amount of his shares of stock; nor shall any loan then be made if, in the opinion of the directors, the object of the loan is to replace money borrowed to pay up his stock.

SECTION 4. *Be it further enacted*, That the capital stock of no bank in this State shall exceed three millions of dollars; nor shall any bank commence the business of banking with a less paid-in capital stock than three hundred thousand dollars. And it shall be the duty of the supervisor to examine and report to the governor that this sum is actually paid in before any bank shall commence business. *Provided:* That existing banks which may have more than three millions capital stock or less paid-in capital stock than three hundred thousand dollars shall not be restricted to three millions capital stock or compelled
52 to increase their paid capital stock to three hundred thousand dollars.

SECTION 5. *Be it further enacted*, That it shall not be lawful for any bank in the State, directly or indirectly, to increase its total liabilities beyond the amount of its total solvent assets, or use or employ any of

its moneys, goods, chattels, or effects in trade or commerce; and no bank shall hold or own more real estate than is necessary to carry on its banking business; *Provided, however:* It may receive mortgages, and assignments for debts previously contracted, and purchase in real estate thus mortgaged or assigned, and purchase in lands sold at execution-sale under judgments in its favor, or redeem lands subject to redemption in order to secure its bad or doubtful debts, but it shall not hold the same for a longer period than five years.

SECTION 6. *Be it further enacted*, That no bank in this State shall permit its issues in actual circulation to exceed the proportion of two for one of its specie funds, consisting of coin, notes of specie-paying banks, and sight exchange. Nor shall any bank issue two for one of specie funds if the same exceed in the aggregate two for one of
53 actually paid capital stock. Each and every bank shall own and have in its own vaults, for the protection of the note-holder, an amount of coin equal to one-fourth of its entire circulation, and shall own and keep on hand an amount of specie funds equal to one-third of its entire liabilities, and in the event any bank shall permit its coin or coin and specie funds to fall below the proportions aforesaid for the space of forty days together, then all discounts by said bank shall cease until said proportions are restored. And if any bank shall suffer its coin or coin and specie funds to run below said proportions over seventy-five days in all, in any one year, it shall be the duty of the supervisor forthwith to cause proceedings to be instituted in the chancery court of the district where such bank is located, in the name of the State against such bank to have its assets subjected to the payment of its debts, and its charter declared forfeited.

SECTION 7. *Be it further enacted*, That no bank shall employ in its business dividends due to its stockholders unless the same are made part of the permanent paid capital stock of the bank by the stockholders to whom the same are due and owing.

54 SECTION 8. *Be it further enacted*, That with a view to make the capital stock of bank permanent and to guard against the destruction of the same, that the board of directors of each bank, at the end of every six months, shall make a thorough examination of the condition of their respective banks, and ascertain, as nearly as possible, the total amount of bad and doubtful debts due to the same, which shall be reported to the board and spread upon the minutes thereof; and if it appears, from this report and examination, that no profits have been made at these periods or any one them, beyond the bad and doubtful debts, then no dividend shall be made until a similar examination shall show that the profits do exceed the bad and doubtful debts, and then dividends may be declared out of this excess of profits.

SECTION 9. *Be it further enacted*, That no bank shall be chartered for a greater period than fifteen years.

SECTION 10. *Be it further enacted*, That each bank shall make monthly statements, under the oath of its president and cashier, to the
55 comptroller of the State, of its true condition. This statement shall show under separate heads, the amount of coin, the sum due from banks in this State, the amount due from banks out of the State, and the entire amount of its bills, notes, and other assets. It shall also show the entire extent of its liabilities, including its amount of circulation, &c.; which report, when made out and verified, shall be published according to law.

SECTION 11. *Be it further enacted*, That no bank shall deal in uncurrent money, or pay out the notes of other banks; and, when in a state

of suspension, shall not take or receive more than one per cent. for exchange, and shall pay into the treasury of the State one-half of one per cent. on its capital stock for every month or fraction of a month whilst thus remaining in suspension.

SECTION 12. *Be it further enacted*, That no bank shall procure another to give credit to its circulation through any security or indemnity giving for so doing.

SECTION 13. *Be it further enacted*, That each bank shall keep a book for the registry of the number, denomination, and amount of the notes intended for circulation, and that before the same are placed in
56 circulation, the supervisor of banks shall examine the notes, compare them with the registry, see that they are correctly registered, and certify the fact upon the book; and that he shall procure an exact copy of the same and report to the comptroller, who shall publish it according to law; and this shall be done as often as any bank may desire to increase its circulation. If the officers of any bank shall wilfully put in circulation any note or notes not registered as herein provided, such officers shall be guilty of a misdemeanor, and, on conviction, shall be severally fined not less than five hundred dollars, and imprisoned not less than six nor more than twelve months.

SECTION 14. *Be it further enacted*, That no part of the capital stock of any bank shall be withdrawn until its whole liabilities are satisfied, or any portion of its assets applied to any other purpose than that of legitimate banking, as defined and prescribed by the provisions of this act; and any board or such members of the board as shall permit the same to be done, shall be guilty of a misdemeanor, and shall, on conviction thereof, be fined in the sum of five hundred dollars each
57 and imprisoned for not less than two nor more than ten months.

SECTION 15. *Be it further enacted*, That no person shall be a director in any bank, who is not a citizen of this State; nor shall more than two-thirds of any bank directors be stockholders in the bank for which they act as directors, and no directors in any other bank, nor partner in trade of such director, nor two persons trading in partnership at the same time, shall be eligible or capable of serving as directors in such banks.

SECTION 16. *Be it further enacted*, That all accommodation extended to the stockholders of the institution shall be upon the same terms that are exacted from its other customers, and a violation of the provisions of this section shall be a misdemeanor in the directors voting for the same and punishable by fine and imprisonment.

SECTION 17. *Be it further enacted*, That no bank shall pay interest on deposits, nor buy in, hold, or cancel its own stock; but may receive it in payment of bad and doubtful debts, or for the purchase of real estate; and in such cases the stock shall be conveyed to a third party, in trust, to be sold by him for the benefit of such bank.

58 SECTION 18. *Be it further enacted*, That a person known as a supervisor of banks, shall be appointed by the governor and confirmed by the senate, who shall hold his office for two years, and until his successor is appointed and qualified, and duly commissioned, whose duty it shall be to examine and report under oath, at least quarterly, the condition of every bank in the State, showing in his report, under separate heads, the amount of coin, exchange, bills, notes, and other assets of said banks as well as the amount of issues and entire liabilities, of the same. Such statement shall also show the solvent assets and bad and doubtful debts, and other items necessary to explain the condition of the same. And also the name and residence of each of the

stockholders in the same, together with the amount of stock owned by each one of them in said bank. It shall also show whether the capital stock of said bank is paid, and any other fact and circumstance to give the public correct knowledge of the bank, which report shall be published by the comptroller, according to law. In case the supervisor
59 shall die, resign, or remove between the sessions of the general assembly, it shall be the duty of the governor to appoint for the unexpired term.

SECTION 19. *Be it further enacted*, That whenever the supervisor shall desire to make an examination of a bank, it shall be the duty of the officers of the same to afford him every facility for complying with his duties required by this act; and if the supervisor should deem it necessary, he may cause all or any of the officers of said bank to be examined under oath, as to any matters necessary for said examination; and if any officer or officers of the bank shall borrow or otherwise procure any assets not legitimately owned by the bank, to be exhibited to the supervisor as a portion of the property of said bank, it shall be a misdemeanor in those guilty of the same, and on conviction they shall be fined not less than five hundred dollars, and imprisoned not less than six months.

SECTION 20. *Be it further enacted*, That when any bank shall have suspended specie payment wilfully, or remains in that condition for a period of one hundred and twenty days in any one year, it shall
60 be the duty of the supervisor forthwith to cause proceedings to be instituted in the chancery court of the district where the bank is located, in the name of the State of Tennessee, against the bank, to have its assets subjected to the payment of its debts, and its charter declared to be forfeited: *Provided, however*, That if the governor shall be of opinion that it is for the public interest that such proceedings shall not be instituted, he may, in writing, so declare to the supervisor, and suspend all proceedings thereon from time to time, until the meeting of the legislature.

SECTION 21. *Be it further enacted*, That the supervisor appointed under the provisions of this act, before entering upon the duties of his office, shall give bond in the sum of fifty thousand dollars, with good security, payable to the State of Tennessee, and to be approved of by the governor, for the faithful performance of his office, and the penalty of said bond, in all cases where the same is recovered, shall be applied to the benefit of note-holders who have suffered loss by reason of
61 the failure of the supervisor to comply with the provisions of this act; shall take an oath to discharge the duties thereof faithfully, and that he shall receive as compensation for the performance of his duties, the sum of three thousand dollars annually, to be paid to him quarterly out of the treasury. And if said supervisor shall make a false and fraudulent report in regard to the condition of any bank, he shall forfeit and pay to the State the full penalty of said bond, and shall be guilty of the crime of perjury, and upon conviction shall be confined in the penitentiary for a period of not less than three years.

SECTION 22. *Be it further enacted*, That there shall be levied a pro rata tax upon the banks in this State (except the Bank of Tennessee,) which are subject to the provisions of this law, upon the 10th of January, in each year, so as to make up the sum of three thousand dollars, which tax shall be assessed and collected by the treasurer of this State, to pay the salary of the supervisor. And if any bank shall fail to
62 pay the tax so levied, it shall be the duty of the treasurer forthwith to take steps to enforce its collection.

SECTION 23. *Be it further enacted*, That whenever, in the opinion of the supervisor, any bank in the State shall have violated its chartered powers, it shall be his duty to report the fact with his reasons therefor, to the governor and attorney general of the State; and, if they concur with him in opinion, he shall forthwith cause proceedings to be instituted in the chancery court of the district where such bank is located, in the name of the State, to have its assets subjected to the payment of its debts, and its charter declared fortified: *Provided*, That the right of appeal to the supreme court shall exist in favor of either party, notwithstanding anything in this act.

SECTION 24. *Be it further enacted*, That whenever any bank desires to cancel or destroy any part of its old circulation, the same shall be cancelled and burned in the presence of the supervisor after the amount, number, and denomination of such canceled circulation shall
63 have been registered in the registry-book of the bank, and certified as provided in this act.

SECTION 25. *Be it further enacted*, That each bank shall be authorized to discount bills and notes payable in this State, at the rate of six per cent. per annum; and if any bill or note thus discounted is payable at a point different from that at which the bank is located, it may collect, in addition to the six per cent. discount, the sum it will cost to collect such bill or note, if paid at maturity; and each bank shall be authorized to discount bills payable out of the State, at the rate of six per cent. per annum, with a reasonable exchange in addition thereto.

SECTION 26. *Be it further enacted*, That each stockholder in any of the banks of this State shall be individually liable for any loss sustained by the creditors of the institution to the amount and value of his stock, until he has paid the same in full on his original subscription. And if any director or directors of any of the banks in this State shall be guilty of any fraud or any wilful mismanagement of the affairs
64 of such banks, by which any loss shall be occasioned to its creditors, such director or directors, upon legal ascertainment of the fact, shall be individually liable for such loss, and all the stockholders assenting thereto, shall be liable in like manner.

SECTION 27. *Be it further enacted*, That banks and banking companies subject to the provisions of this act, shall pay as a tax to the State, on the first of January of each year, one-half of one per centum on their actual capital.

SECTION 28. *Be it further enacted*, That each and every bank in this State shall be subject to the examination of such committees as the legislature may from time to time appoint.

SECTION 29. *Be it further enacted*, That banks and the business of banking in this State shall be subject to such general laws regulating the same, as the legislature may from time to time enact.

SECTION 30. *Be it further enacted*, That, in case of the insolvency of any bank or banking association, the bill-holders thereof shall be entitled to preference in payment over all other creditors of such bank or association; and no transfer or assignment of any note, bill of
65 exchange, or other evidence of debt by the bank shall prevent the debtor from paying the same in the hands of the assignee, in the currency of such bank.

SECTION 31. *Be it further enacted*, That if any bank of this State shall suspend specie payment, the note-holders thereof may present the same for payment; and, if payment is refused, said note-holder may have such notes protested, and shall receive interest at the rate of six per cent. per annum, from the date of protesting, and the cost of protesting: *Pro-*

vided, however, That where any person is the holder of more notes than one of any bank, there shall be put one protest, noting, by number and letter, all the notes held by him in such protest; and for each note after the first, there shall be a fee of five cents each.

SECTION 32. *Be it further enacted*, That banks, chartered subject to the provisions of this act, may surrender their charters and discontinue business; and the period of five years shall be allowed such banks
66 within which to liquidate and close their affairs: *Provided*, That if, whilst so doing, they engage to any extent in the business of banking, the same shall be done in accordance with the provisions of this act, and such supplemental legislation as may from to time be enacted, regulating banks and the business of banking in this State.

SECTION 33. *Be it further enacted*, That the banks chartered under the provisions of this act shall discount, in the aggregate, at least one-third of their capital in notes in the course of each and every year.

This act shall take effect from and after its passage.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of the Senate.

Passed February 6th, 1860.

STATE OF TENNESSEE:

I, J. E. R. Ray, secretary of state, do hereby certify that the
67 foregoing is a true copy of the original enrolled act now on file in my office.

In testimony whereof I have hereunto set my hand, at office in Nashville, on this 9th day of March, A. D. 1860.

J. E. R. RAY,
Secretary of State.

An act to incorporate the capital stock of the Union Bank and Planters' Bank of Tennessee.

SECTION 1st. *Be it enacted by the general assembly of the State of Tennessee*, That the president, directors, and company of the Union Bank of the State of Tennessee, under the name of the "Union Bank of Tennessee," and the "Planters' Bank of Tennessee," be bodies politic and corporate until the 1st day of January, 1878, with all the powers and privileges, duties and obligations, and subject to all the stipulations and provisions of the acts passed the 18th day of October,
68 1832, and the 15th day of November, 1833, chartering said banks, and the acts amendatory thereto, as now binding on each respectively, except so far as the same are altered, repealed, or modified by an act passed on the 6th day of February, 1860, styled "An act to reform and regulate the business of banking in Tennessee," to which said charters are subject, and that the existing stock-holders of said corporations, respectively, (or those who shall be such at the time of acceptance,) shall have until the 1st day in October, 1860, to accept this charter.

SECTION 2. *Be it further enacted*, That the capital stock of said Planters' Bank of Tennessee may be increased to the sum of two millions of dollars; and that said additional stock may be subscribed for at the principal bank of Nashville, without any right of pre-em'tion on the part of the existing stock-holders at any time within two months after the acceptance of this charter, and until the whole additional
69 stock shall be taken; no individual, company, or corporation being

allowed to take or subscribe for more than two hundred and fifty shares until six months after the books shall be opened for subscription.

SECTION 3D. *Be it further enacted*, That, whereas the State of Tennessee has sold out the stock heretofore held by it in the Union Bank of Tennessee, *has sold out the stock heretofore held by it in the Union Bank of Tennessee*, the affairs of said corporation shall be administered by eleven directors, to be elected by the stockholders.

SECTION 4. *Be it further enacted*, That the Planters' Bank of Tennessee may establish a branch at Murfreesboro', in Rutherford County, and a branch at Livingston, Overton County, and also a branch at Chattanooga, in Hamilton County; and that the Planters' and Union Banks, or either of them, may establish a branch at Purdy, McNairy County; at Waynesborough, Wayne County; at McMinnville, Warren County; and at Hartsville, Sumner County, at any time after the passage of this act.

70 SECTION 5. *Be it further enacted*, That the stocks of said banks shall be transferable and assignable according to such rules and ordinances as shall be prescribed by the president and directors thereof.

SECTION 6. *Be it further enacted*, That said banks shall have the privilege of issuing notes of the denomination of five dollars whenever that privilege shall be granted to any other bank in the State.

SECTION 7. *Be it further enacted*, That the Union Bank and its branches may put out all the notes of said bank.

SECTION 8. *Be it further enacted*, That the Planters' Bank and its branches may pay out all the notes of said bank.

SECTION 9. *Be it further enacted*, That the directors, officers, and employés of said Union and Planters' Banks, shall take the same oath and be subject to the same penalties imposed on the directors and officers of the Bank of Tennessee, when entering on the discharge of duties as as directors, officers, &c., of said Bank of Tennessee.

W. C. WHITTHORNE,
Speaker of the House of Representatives.
TAZ. W. NEWMAN,
Speaker of Senate.

Passed March 1st, 1860.

71 STATE OF TENNESSEE:

I, J. E. R. Ray, secretary of state, hereby certify that the foregoing is a true copy of the original enrolled act on file in my office.

In testimony whereof I have hereunto set my hand at office in Nashville, on this the 7th day of March, A. D. 1860.

[L. S.] J. E. R. RAY,
Secretary of State.

Certificate attached to bank code.

[Ten-cent int. rev. stamps.]

STATE OF TENNESSEE,
Executive Department, Nashville, December 21st, 1863.

I, Edward H. East, secretary of the State of Tennessee, do hereby certify that the foregoing bank code is a full, true, and perfect copy of the acts of the legislature of Tennessee.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Tennessee, at the place and date above written.

By order of the governor:

[SEAL.] EDWARD H. EAST,
Secretary of State.

Answer.—Filed November 15th, 1866.

United States circuit court.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.
No. 4065.

72 Now come the Union Bank of Louisiana, a corporation duly organised and established in the city of New Orleans, and for answer to the petition of the said pl'ff's, The Planters' Bank of Tennessee, deny generally all the allegations in the said petition contained, not herein specially admitted.

Defendants admit that the commercial dealings have heretofore taken place between the said plaintiffs and these defendants, in the course of which the said plaintiffs remitted large sums to these defendants, and also forwarded drafts and other assets to defendants for collection, and that, in the course of such dealings, a large ballance ac'rued in favor of the said plaintiffs, but these defendants specially aver that the said balance, although expressed in dollars and cents, was not composed of the lawful money of the United States; that the remittances to the said defendants consisted of the currency then in use, and known as "confederate money;" that the drafts and other assets forwarded to these defendants for collection were payable, as was well known and understood by all parties, only in such confederate currency,
73 and all collections made for the account of the said plaintiffs, were made in that currency, with their knowledge and authority; and that the balance, thus arising in favor of the said plaintiffs, was entirely made up of the said confederate currency. Defendants further aver that, at the time of the commercial dealings aforesaid, and during the whole period in which the balance aforesaid accrued, the States of Tennessee and Louisiana formed part of a certain so-called confederacy, known as the "Confederate States of America;" that the said Confederate States were then engaged in open rebellion against the United States of America; that the city of New Orleans was then occupied by the confederate forces, and continued in such occupation till the day of April, 1862, or thereabouts, when the said city was occupied by the military forces of the United States; that, after the city was so occupied, it continued throughout the war, and down to the restoration of peace, subject to martial law, and to the general and special orders from time to time issued by the several officers in command of the army of occupation; that, on or about the day of 1863, in pursuance of the orders of the officer in command, these defendants were
74 required to pay over to the proper officer of the United States the balance of funds or assets then held by defendants for the account of said plaintiffs; and that defendants, accordingly, under date of the 10th September, 1863, or thereabouts, paid over to said officer, in pursuance of the orders aforesaid, all the funds or assets held by defendants for account of the plaintiffs herein, which payment was made under coercion, and in spite of the protest of these defendants; and that these defendants, in virtue of such payment, are discharged and released from all further claim or demand on the part of the plaintiffs herein. Defendants further show that the currency aforesaid remitted by the said plaintiffs, or received for their account, consisted of the issues of the so-called "Confederate States," aforesaid, known as confederate money, issued and put in circulation by the said Confederate States during the

rebellion in which they were engaged against the United States for the purpose of providing the ways and means for the maintenance and prosecution of the war; that the issue and circulation of the said confederate currency was unlawful, contrary to the laws and Constitution of the United States; that the dealings of the plaintiffs in the said cur-
75 rency were designed on their part to give, and did contribute to give circulation and credit to such unlawful issues, and that these defendants are therefore not liable, on account of the receipt of such currency, to the plaintiffs herein, in manner and form as by them alleged.

Wherefore defendants pray that they may be hence discharged with costs, and for general relief.

And defendants specially pray for trial by jury.

(Signed) J. N. LEA.
(Signed) WM H. HUNT,
Of Counsel.

Order to file amended petition.—Extract from the minutes.

In the circuit court of the United States, fifth circuit and district of Louisiana, April term, 1867.

NEW ORLEANS, *Saturday, May 11th*, 1867.

Court met pursuant to adjournment.

Present, Hon. E. H. Durel, district judge; absent, Hon. J. M. Wayne, presiding judge.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. } No. 4065.

76 On motion of Thomas Hunton, esq., attorney for plaintiffs, it is ordered that plaintiff have leave to file an amended petition herein.

Amended petition.—Filed May 11th, 1867.

U. S. circuit court.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. } No. .

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The supplemental and amended petition of plaintiff, filed by leave of the court, respectfully shows that, in the original petition filed herein, the sum of $99,394.01 was claimed as due petitioner from defendant; that, in addition to the aforesaid sum which is due to petitioner for monies and bank notes of the par value of United States Treasury notes, which were collected by defendant for plaintiff, and received by defendant as deposits, for account of petitioner, there is due from defendant to petitioner on the same account the further sum of thirteen thou-
77 sand nine hundred and two dollars, erroneously omitted in the account first filed and sued on.

Petitioner prays that the defendant be cited to answer the

amended petition, and be condemned to pay to plaintiff the sum of one hundred and thirteen thousand two hundred and ninety-six $\frac{01}{100}$ dollars, with interest from the 25th day of November, 1863, and costs; and petitioner prays for general relief.

(Signed) THO. HUNTON.
(Signed) J. A. CLARKE,
For Plaintiff.

Citation.—Issued May 11th, 1867.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. } No. 4065.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon the Union Bank of Louisiana, a corporation duly established by the laws of the State of Louisi-
78 ana, and a citizen of the State of Louisiana, to comply with the demand of the Planters' Bank of Tennessee, a corporation duly established by the laws of the State of Tennessee, and a citizen of the State of Tennessee, and contained in the amended petition filed by leave of court, of which a copy accompanies this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against it by default which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of June, 1867.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 13th day of May, A. D. one thousand eight hundred and sixty-seven, and of the independence of the United States of America the 91st year.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

79 *Marshal's return thereon.*

Received May 13th, 1867, and, on the 14th day of same month & year, served a copy of the within citation and amended petition of plaintiff accompanying the same on the Union Bank of Louisiana, the defendant named herein, by giving said documents into the hands of Geo. A. Freret, the cashier of said Union Bank of Louisiana, at the banking-house, No. 122 Canal street, in this city, the teller being absent.

New Orleans, May 15th, 1867.

(Signed) M. EGAN, *D'y U. S. Marshal.*

Judgment by default.—Extract from minutes, February 3d, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

On motion of Hunton & Clarke, attorneys for plaintiff, and on show-

ing to the court that the defendant has failed to answer the amended petition, altho' duly cited.

Ordered that judgment by default be entered against him.

80 *Note of evidence.—Filed February 7th*, 1868.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LA. } 4065.

Note of evidence.

Pl'ffs offered in evidence the drafts described in the petition 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, & doc'ts 15 & 16.

Continuance.—Extracts from minutes, February 7th, 1868.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LA. } 4065.

This cause came up for trial before the court and a jury.

T. A. Clarke & Tho's Hunton for pl'ff; Bradford, Lea & Finney, & W. H. Hunt for def't.

When the following persons were called and sworn on the jury, to wit:

81 Ernest Chesse, Sidney Thézan, A. Shelley, Edmond Flood, Euzebe Reggis, Henry Rey, L. Couverti, E. Dupuy, O. Belot, F. G. Dupui, J. M. Leclerc, R. W. Bowie, and the jury being complete, the trial proceeded; and, after hearing the pleadings and evidence in part, the cause is continued till to-morrow at 11 a. m.

Note of evidence.—Filed February 8th, 1868.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

Note of evidence.

Plaintiffs offered doc't No. 17.
W. A. Johnson sworn for pl'ffs
Def't offered 18 telegrams—19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30.
Special order 202.
Mr. Wheelis, W. M. Perkins, G. A. Freret sworn.

Continuance.—Extract from minutes, February 8th, 1868.

82 PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

This cause came up agreeably to continuance—T. A. Clarke and

Tho's Hunton, for pl'ffs; Bradford, Lea & Finney, & W'm H. Hunt for def'ts—and, the jurors sworn in having all answer'd to their names, the trial proceeded; and, after hearing further evidence, the cause is continued till Monday 10th instant, at 11 a. m.

Note of evidence.—Filed February 10*th*, 1871.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

Note of evidence.

Def'ts offered doct's 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46.

Act of the confederate congress, chapter 23d, of August 19th, 1861, not furnished.

Mr. Wilson for pl'ff. E. Garcia.

83 *Continuance.—Extract from minutes, February* 10*th*, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

This cause came up as per continuance—Clarke & Hunton for pl'ffs; Bradford, Lea & Finney, & W. H. Hunt for def'ts—and the jurors sworn in being all present, the trial was resumed; and, after hearing further evidence and argument of counsel, the cause is continued till tomorrow at 11 a. m.

Answer.—Filed February 11*th*, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. }

Now came the def'ts, and, for answer to the supplemental petition filed herein, set up the same defense as pleaded in the answer on file to the original petition of the said pl'ff.

Wherefore def'ts pray to be hence dismissed with costs, and for general aid and relief.

(Signed) BRADFORD, LEA & FINNEY.
(Signed) W. H. HUNT, *For Def'ts.*.

84 *Verdict and judgment.—Extract from minutes, February* 11*th*, 1868

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

This cause came up agreeably to yesterday's continuance, and, all the counsel engaged & jurors sworn being present, the trial was resumed; and, after hearing further argument and receiving a charge from the

court, A. Shelley was appointed foreman of the jury, and, at 5½ p. m., they retired to consider on their verdict. At 9 p. m. they returned into court and delivered the following verdict, to wit:

FEBRUARY 11th, 1868.

Verdict for the amount claimed in full, with interest for plaintiff, $113,296.01.

(Signed) A. SHELLY, *Foreman.*

And the jury being now polled, at the request of the defendant's attorneys, it appeared that they had unanimously agreed in the verdict.

Whereupon, on motion of the attorneys for the plaintiffs, it is ordered by the court that the verdict be recorded, and that, in accordance
85 therewith, judgment be entered in favor of The Planters' Bank of Tennessee, and against The Union Bank of Louisiana, for the sum of one hundred and thirteen thousand two hundred and ninety-six dollars one cent, with 5% interest from 25th November, 1863, till paid, & costs of suit.

Rule for new trial.—Extract from minutes, Feb'y 14th, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

On motion of W. H. Hunt, & of Bradford, Lea & Finney, of counsel of def'ts, it is ordered that The Planters' Bank of Tennessee show cause, on Friday, 21st inst., at 11 a. m., why the verdict and judgment herein should not be set aside, and a new trial granted on the grounds filed.

Grounds for new trial.

Circuit court of the United States, fifth circuit and district of Louisiana. November term, A. D. 1868.

NEW ORLEANS,
Friday, 14th day of February, 1868.

Court met pursuant to adjournment.

Present, the Honorable E. H. Durell, dist. judge, the Honorable , judge.

86 PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } No. 4065.

On motion of W. H. Hunt, and of Bradford, Lea and Finney, of counsel for def'ts, it is ordered that the Planters' Bank of Tennessee show cause, on Friday, 21st inst., at 11 a. m., why the verdict and judgment herein should not be set aside and a new trial granted on the grounds filed—

1st. That the court erred in its instructions to the jury.

2d. That the verdict and judgment entered therein are against law and the evidence in the case.

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 14th day of February, 1868.

[CLERK'S OFFICE SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return thereon.

Received February 15th, 1868, by the U. S. marshal, and, on same day of Feb'y, 1868, left copy of within rule, &c., on desk of Thomas Hunter, named herein, (he being absent at the time,) at his office, 125 Gravier st., in this city.

(Signed) H. J. SAMPSON,
D'y Marshal.

CITY OF NEW ORLEANS,
February 15th, 1868.

87 *Continuance of rule.—Extract from minutes, Feb'y 21st, 1868.*

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

By consent of counsel the rule for a new trial herein, returnable this day, is continued till Saturday, 29th instant, at 11 a. m.

Hearing of rule, &c.—Extract from minutes, Feb'y 29th, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

The rule for a new trial taken by the def't was called up—Bradford, Lea & Finney, for pl'ff in rule; Thom. Hunton & T. A. Clark, for def't in rule—when, after hearing counsel, the same was continued indefinitely.

Statement.—Filed March 4th, 1868.

U. S. circuit court.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

In the above suit, immediately after the court had concluded
88 the charge to the jury, & while the jury were still in their seats, I rose, and, speaking from my place at the bar, and addressing myself to the court, gave notice that I reserved the def't's exceptions to the charge given by the court.

Mr. Clarke, one of the counsel for the pl'ffs, had also risen, and was standing next to me, and then I proposed to him that I would look over the charges which had been submitted to the court, and prepare the bills of exception afterwards. Mr. Clarke accepted the proposition and made a like stipulation on the part of the pl'ffs, to which I also agreed. This mutual arrangement betv een Mr. Clarke and myself was made as we were standing at the bar, while the clerk was gathering up the

papers to be given to the jury, and while the jury were still in their seats.

(Signed) E. A. BRADFORD.

I concur in the above statement.

(Signed) THO'S ALLEN CLARKE.

Statement.—Filed March 5th, 1868.

U. S. circuit court.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA.

Mr. Bradford, on behalf of defendant, thinks that he reserved exceptions to the charge of the judge in this case.

Mr. Clarke, of counsel for plaintiff, seems to concur with Mr. Bradford.

89 Contra: Mr. Hunton has no recollection whatever of any exception reserved, and Mr. Hunt, one of the attorneys for defendant, does not recollect that any was reserved. I understood the court to have remarked that it had no recollection of the reservation of any exception.

I am confirmed in my recollection of what transpired at the trial, by two circumstances:

1st. The morning after the rendition of the verdict I was asked by a distinguished member of the bar whether any exceptions had been taken; to which I replied at that time, when the whole matter was fresh in my mind, "No."

2d. Mr. Clarke affirms that, immediately after the judge had completed his charge, Mr. Att'y Hunt turned to his colleague and remarked, "The judge has given us everything we asked." Besides, if Mr. Br. is correct, that he reserved his exceptions, still it must have been in the most general terms. It is certain that no specific exceptions were taken, and none other can be of any avail.

I beg leave to remark further that if there was any agreement between Bradford and Clarke, as to the filing of a bill, that this
90 could only have referred to the time when the bill might be filed.

That under the ruling in Carver vs. Astor, 4 Pet., 1, the court itself must be advised, at the time of the charge, of any objection, and of the specific objection, so that it may have an opportunity of correcting, explaining, or qualifying, and thus possibly rendering the charge unexceptionable. This is always due to the court, and no agreement of counsel can override the right of the court to know, before the jury retires, whether any specific charge is objected to. Under all the circumstances of this case I feel it to be my duty to insist upon the strict rule of law, and upon the application of the rule of court which requires all agreements of counsel to be in writing.

The court is respectfully referred to the following authorities to show that a specific objection must be taken to the charge of the judge, before the jury retires, and to show other reason' why defendant is not entitled to his bill. (Carver vs. Astor, 4th Peters, 1; Bradsteuls, A., in 4th Peters, 102; More vs. Bank, 13 Pet., 302; Phelps vs. Mayor, 15 How.; Turner vs. Zales, 16 How'd, 14.)

Respectfully submitted.

(Signed) THO'S HUNTON,
For Pl'ffs.

91 *Submission of rule.—Extracts from minutes, March 21st, 1868.*

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

The rule for a new trial taken by the def'ts came up—Thom's Hunton and T. A. Clarke for pl'ffs; Bradford, Lea and Finney, and W. H. Hunt, for def'ts—when, after hearing argument of counsel, the court took time to adjourn.

Entering remittitur.—Extract from minutes, March 21st, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

On motion of Hunton and Clarke, atty's for plaintiff, it is ordered that a remittitur of interest allowed in the judgment in this case, be entered, except what is claimed, as follows: Plaintiff claims interest on the sum of $52,483.65; and on $17,741.38; and on $16,421.61, from the 25th of November, 1863, and on $10,331.02 from the 29th of August, 1865; and on $1,520 from the 10th of May, 1864; and on the sum of $13,902 from the 11th of May, 1867, plaintiff specially reserving and
92 retaining all its rights as to the balance of the judgment in its favor.

Rule.—Extract from minutes, March 21st, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

On motion of Hunton and T. A. Clarke, attorneys for plaintiff, and on suggesting to the court that, on the trial of this case the defendant, by its attorneys, admitted in open court and before the jury that there was due to plaintiff the sum of $26,752.63, with interest thereon from the 25th day of November, 1863; and the said defendant having no right under the law, *no right* to a writ of error with supersedeas, so far as regards the amount so admitted to be due, it is ordered that defendant show cause, on the 4th day of April, 1868, at 11 a. m., why a writ of fieri facias should not issue against defendant for the aforesaid sum of twenty-six thousand seven hundred and fifty-two $\frac{63}{100}$ dollars, with interest at the rate of 5% per annum from the 25th day of November, 1863, and costs of suit, the plaintiff specially reserving all its rights, under the
93 judgment herein, as to the balance of said judgment, for the amount of principal and interest in its favor.

Marshal's return thereon.

Received March 23d, 1868, by the U. S. marshal, and, on 24th day of March, 1868, served copy of the within order on Bradford, Lea & Finney, attorneys named herein, in the hands of J. G. Finney, cl'k, at office 31 Comm'l place, in this city.

New Orleans, March 24th, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order cause reinstated, &c.—Extract from minutes, March 31st, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

Ordered that the cause be reinstated; that a second argument be had on the rule for a new trial; that the hearing of the same be assigned on the 7th day of April next, at 11 a. m., and that the plaintiffs and defendants be notified hereof.

94 *Marshal's return.*

Received April 1st, 1868, by the U. S. marshal, and, on the same day of April, 1868, left copy of within order on desk of Hunton, a member of firm of Hunton and Clarke, named herein, at office over Canal Bank; and, on same day, served copy of same on Bradford, Lea and Finney, & W. H. Hunt, in the hands of Bradford, one of above-named, att'y, personally, at office cor' of Comm'l place and Camp streets, in this city.

New Orleans, April 2d, 1868.

(Signed) H. FIELD,
D'y U. S. Marshal.

Order, rule absolute.—Extract from minutes, April 4th, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

The rule taken by plaintiffs on 21st ult'o, came up—Thomas Hunton for pl'ffs, E. A. Bradford for def'ts—when, after hearing counsel, it is ordered that the rule be made absolute, and that pl'ffs have leave to issue execution against the defendants for the amount admitted by their counsel, in open court and before the jury, to be due to the plaint-
95 iffs, say $26,752.63, with 5% interest from 25th November, 1863, till paid, and costs, and without prejudice to plaintiff's rights to recover the balance under the judgment in the case.

Submission of rule for new trial.—Extract from minutes, April 7th, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

This cause came up on the second argument upon the rule for a new trial—Tho's Hunton & T. A. Clarke for pl'ffs, Bradford, Lea, & Finney, & W. H. Hunt, for def'ts, pl'ffs in rule—and, after hearing counsel on both sides, the court took time to advise.

Order rule absolute.—Extract from minutes, April 15th, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

For reasons orally assigned, it is ordered that the rule taken by

96 defendants, on the 14th February, 1868, be made absolute, and that a new trial be granted in this case, excepting as regards the sum of $26,752.63, with interest, which was admitted by the def'ts to be due the pl'ffs.

Motion and order.—Extract from minutes, May 2d, 1868.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

On motion of Thomas Hunton, att'y for plaintiff, it is ordered that plaintiff have leave to file an amended and supplemental petition in this case.

Supplemental and amended petition.—Filed May 2d, 1868.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA.

To the hon. the judge of the circuit court of the United States, for the fifth circuit and district of Louisiana.

The supplemental and amended petition of the plaintiff respectfully shows:

97 That, in consequence of the interruption of intercourse between plaintiff and defendant during the late rebellion, or from other causes, the plaintiff did not receive full accounts from the defendant, and did not, therefore, know what payments had been by the defendants on the drafts of plaintiff, and did not know the exact state of the account between them.

Your petitioner represents that certain credits were erroniously allowed the defendant by the plaintiff, or certain amounts due the plaintiff were not claimed in the original and amended petitions filed herein, because it was supposed that the Union Bank had paid the drafts for those amounts drawn on it by plaintiff, when, in fact, those drafts had not been paid by defendant, but payment of the same is now demanded of the plaintiff by the parties holding said drafts.

Petitioner avers that the true amount due to the plaintiff by the defendant at the institution of this suit for money and bank-notes of the par value of United States Treasury notes which were collected
98 by defendant for plaintiff, and received by defendant as deposites for account of plaintiff, was one hundred and twenty-five thousand six hundred and seven $\frac{82}{100}$ dollars, ($125,607.82,) with interest thereon from the 25th day of November, 1863, and this amount, with interest, is now justly due and owing to the plaintiff, less a credit of $26,752.63 principal, and $4,938.68 interest, making in all $31,691.86 heretofore paid to plaintiff.

Wherefore petitioner prays that the Union Bank be cited to answer this amended petition, and, after due proceedings, be condemned to pay to plaintiff the balance now due, to wit, the sum of $98,855.19, (ninety-eight thousand eight hundred and fifty-five $\frac{19}{100}$ dollars,) with interest from the 25th day of November, 1863, and costs, and for general relief.

(Signed) THOMAS HUNT,
Att'y for Pl'ff.

Citation.—Issued May 2d, 1868.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. } 4065.

The President of the United States to the marshal of the district of La:

99 You are hereby commanded to summon the Union Bank of Louisiana, a corporation duly established by the laws of the State of Louisiana, and a citizen of the State of Louisiana, to comply with the demand of the Planters' Bank of Tennessee, a corporation duly established by the laws of the State of Tennessee, and a citizen of the State of Tennessee, contained in the supplemental and amended petition filed by leave of court, of which a copy accompanies this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of June, 1868.

100 Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 2d day of May, A. D. one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 92d year.

[SEAL.] (Signed) D. URBAN, *Clerk.*
(Signed) By F. B. VINOT, *D'y Clerk.*

Marshal's return thereon.

Received May 4th, 1868, by the United States marshal, and, on same day of May, '68, served copy of within citation, amended petition accompanying same, on Union Bank of La., named herein, in hands of G. A. Freret, cashier of said bank, personally, at office 122 Canal street, in this city.

New Orleans, May 5, 1868.

(Signed) S. W. REED,
D'y U. S. Marshal.

101 *Exception.—Filed May 13th, 1868.*

U. S. circuit court.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. }

Now came the said def'ts, The Union Bank of Louisiana, and except to the supplemental and amended petition of the said pl'ffs filed herein on the 2d of May inst., on the ground that the said petition is vague, defective, and insufficient in the statement of the said pl'ffs, and particularly that no account or bill of items is annexed or referred to, showing what money or bank-notes were received by def'ts, as alleged, for account of said pl'ffs, nor at what dates, nor in what form, nor from what parties, nor for whose account, whether for the bank at Nashville or its

branches, or what branches; and def'ts show that, as they are advised and believe, they cannot safely answer or proceed to trial without a clearer or more definite statement of the pl'ff's claim.

Wherefore def'ts pray that this exception be maintained, and
102 that the pl'ffs be ordered to file herein a detailed statement of their claim, and particularly that they be ordered to produce and file in court a copy of their account with these def'ts as the said account now stands on the books of the said pl'ffs; and also a statement of the credits erroneously allowed on amount due said pl'ffs and not previously claimed as alleged, with a list of the drafts drawn by the said plaintiffs and not paid as alleged, but now in suit against said plaintiffs, and all further details requisite and necessary, in order that these def'ts may safely answer thereto.

(Signed) BRADFORD, LEA & FINNEY.
(Signed) W'M H. HUNT, *of Counsel.*

Motion and order.—Extract from minutes, April 18th, 1870.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065

On motion of Lea, Finney & Miller, att'ys for the def'ts, suggesting that this cause fixed for the 20th instant was continued,
103 on motion of counsel for the adverse party, without their knowledge or consent, ordered that the entry of the 16 instant be vacated, and that the cause remain fixed for the 20th inst. at 11 a. m.

Motion and order.—Extract from minutes, January 24th, 1871.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA, } 4065.

On motion of Tho. Hunton, att'y for the pl'ff, and on suggesting to the court that Dempsey Weaver, a citizen of Nashville, in the State of Tennessee, has been appointed by the chancellor of the chancery court, sitting at Nashville, in the State of Tennessee, trustee and receiver of the said Planters' Bank, and that the said Weaver was so appointed since the institution of this suit, as fully appears from the deed of assignment filed herewith, it is ordered that the said Dempsey Weaver, trustee and receiver as aforesaid, be substituted as plaintiff herein in lieu of the said Planters' Bank.

104 *Deed of assignment.—Filed Jan'y 24th,* 1871.

This deed of assignment, made this 3d day of July, 1865, between the Planters' Bank of Tennessee of the one part, and Dempsey Weaver, of the county of Davidson, of the other part, witnesseth: That the said "The Planters' Bank of Tennessee," for and in consideration of the sum of one dollar to it in hand paid by said Dempsey Weaver, the receipt whereof is hereby acknowledged, and for and in consideration of the trusts hereinafter expressed, does hereby bargain, sell, give, grant, alien, and convey to the said Dempsey Weaver, his heirs, &c., a certain parcel of land, situated in the city of Nashville, and in what was formerly called Barrow's Grove, and known as lot No. 125 in Barrow's

Grove plan of lots, which plan is registered in Davidson City register's office, in books "S," page 279, to which reference is hereby made, and being the same lot conveyed to the party of the first part by deed of J. R. Edmonson, sheriff, &c., also registered in said office, book No. 32, pages 50 and 51, and to which reference is hereby made; also, a
105 certain other parcel of land, situated in the town of Athens, and c'ty of McMinn, and State of Tennessee, being the same upon which is situate the banking-house of the b'r'd of the Planters' Bank of Tennessee, at Athens; also, all and any land, or interest in lands or real estate owned by said party of the first part in any of the States of Miss., Ark., or Texas: To have and to hold to the said Dempsey Weaver, his heirs, &c., and the said "The Planters' Bank of Tennessee," do hereby covenant and agree to and with the said Dempsey Weaver, that it will warrant and forever defend the right and title to said lots, lands, and real estate to said Weaver and his heirs, against the lawful claims of all persons whatever; and for the consideration aforesaid, the said "The Planters' Bank of Tennessee," does hereby for other assign, transfer, and set over, bargain, sell, and deliver to the said Dempsey Weaver the whole of its personal property and effects of what nature soever the same and whereever or in whose hands soever the same may be, including money, bills, bonds, notes, accounts, drafts, choses in action, and other property and effects, of which a full and com-
106 plete schedule will be furnished as soon as it can be conveniently done, to be then registered and to accompany this deed, and for the present this general discription is given of said property, viz: ($109,000,) one hundred and nine thousand dollars in gold; ($145,247,) one hundred and forty-five thousand two hundred and forty-seven dollars in sterling exchange, and amount of the legal tender bank-notes of the United States of America, and bank-notes of national banks not at present accurately ascertained; an amount of bank-notes of the Bank of Tennessee; an amount of bank-notes of the Union Bank of Tennessee; an amount of the bank-notes of various banks of the States of Georgia, South Carolina, Alabama, and Louisiana, of all of which amounts of bank-notes a more accurate description as to amounts will be given in the schedule to be prepared as above; an am't of the notes of individuals, of bills obligatory and bills of exchange held by the parent bank at Nashville and its branches, except the branches at Athens and Memphis, appearing by the bank-books to be
107 ($866,152) eight hundred and sixty-six thousand one hundred and fifty-two dollars; (750) seven hundred and fifty bonds of the State of Tennessee, bearing interest at 8 per cent., of $1,000 each; (85) eighty-five bonds of the State of Tennessee, bearing interest at 6 per cent.; (114,') one hundred and fourteen thousand dollars in confederate money, said to be invested in cotton in Geo., by H. R. Chandler, ag't of said party of the first part; (73,063,) seventy-three thousand and sixty-three dollars in confederate money, said to be invested in cotton in Louisiana and Texas, by W. A. Johnson & Co., ag'ts of said *said* party of the first part. The assets, whatever they may turn out to be, of the branches of the bank at Athens and Memphis, with which communication was violently put an end to in February, 1862, and whose accounts stood, respectively, at that time, as follows, viz: That at Memphis, with notes, bills, suspended debt to an amount of $771,400, and confederate notes $27,654,000, against a claim by depository of $341,000; that at Athens, with notes, bills, and real estate to an amount of $1,057,-
108 551.00, and confederate notes, $70,608.00, against a claim by depository of $34,641; of these two branches their assets and

present situation a more accurate description will be given as soon as it can be reached in the schedule above referred to. And to the said Dempsey Weaver, the said party of the first part does also hereby assign, to be delivered to him with the other property aforesaid, immediately upon his acceptance of this trust, which acceptance must be in writing or otherwise void, the books of said corporation of every description and all its evidences of debt & property. This conveyance and assignment and transfer are, however, made upon trust, and to and for the uses, trusts, and purposes following, viz:

Whereas the said "The Planters' Bank of Tennessee," is justly indebted to many persons in the State of Tennessee and elsewhere on account of its promissory notes, commonly called bank-notes, now in circulation and held by such persons to the amount of about two millions of dollars; and, whereas upon some of said notes suits have been brought in the circuit court of the United States, at Nashville,
109 and judgments obtained thereon and appeals taken to the Supreme Court of the United States; and whereas also, upon some of said notes, suits have been brought and judgments obtained before W. F. Meachain and W. D. Robinson, justices of the peace of Nashville, and appeals taken to the circuit court of Davidson County; and whereas Orville Ewing and Dempsey Weaver, and possibly some other persons, have become securities upon the said several appeal-bonds for said bank; and whereas the said bank is indebted on other accounts to several persons; and whereas, in the execution of the trusts hereinafter specified the time and labor of the said Weaver as trustee, will be necessarily employed, and expenses will have to be encurred, and agents probably employed by and under him: Now the said Dempsey Weaver may and shall, immediately upon his acceptance of said trusts as aforesaid, take into his possession all and every, the property and effects real and personal aforesaid, and proceed without delay to collect the debts due to the said party of the first part, and reduce to cash the
110 assets aforesaid of every description, with power on his part to sell and convey the real estate for cash or on credit as in his discretion he may deem most expedient, and he is also to have power to sell and dispose of any bonds of States or other State securities, or other security or securities which from the time they may have to run, and from any other cause, he may not be able within a reasonable time to reduce to cash; and, with a view to the speedy settlement of the affairs of the trust and to the safety of the funds hereby transferred, said trustee is authorised to compromise with the debtors of said bank all bad and doubtful and disputed debts, and to claim and allow legal and equitable set-off, and to make arrangements of debts such as a prudent man would make in the management of his own affairs, with a view to effectuate the objects of this trust; and the said trustee is hereby authorized and empowered to employ agents and attorneys at law under him, and to pay them out of said funds, and to use the name of said corpora-
111 tion in any way that it may be necessary for the purposes of this trust. The said trustee shall himself be paid fair and liberal compensation for his services under this trust, to be allowed him by the court of chancery, at Nashville; the said trustee shall also have power to refer to arbitration any question between himself and any creditor or debtor of said corporation or claimant of any right against said corporation or said trustee. The said trustee shall from time to time make distribution and dividends from his collections, retaining first in his hands a sufficiency of money to meet the expenses of this trust and *and* his own compensation as follows:

First. He shall pay in full all claims which have been sued upon, and which he and said O. Ewing or other persons are securities upon, for appeals.

Second. He shall pay in full, if he has means sufficient, and if not pro rata, all the bill-holders or holders of the bank-notes issued by said corporation.

Third. He shall, if anything be left after these purposes are accomplished, pay pro rata all the creditors of said bank; and fifth, if
112 there be still a residue, the same shall be devided among the stockholders of said bank pro rata; and upon trust further that the trustee shall have all such other and further power in the management and control of said property in its reduction to possession and distribution, as, under a fair construction of this instrument, and with reference to the object of its creation, should, for the atonement of that object, be vested in him as a discreet and prudent man.

In witness hereof, Orville Ewing, 1st, of said "The Planter's Bank of Tennessee," by order of the board of directors at a meeting of said directors, and in their presence has hereunto set his hand and 1st as aforesaid, and affixed the common seal of said corporation the day and year first above written.

[SEAL.] (Signed) O. EWING, 1ST,
P. B'k of Tennessee.

In presence—
JOSEAT FEROR.
JOS. W. ALLEN.

STATE OF TENNESSEE, *Davidson County:*

113 Personally appeared before me L. P. Nichol, clerk of the county court for the county aforesaid, the above-named Orville Ewing, with whom I am personally acquainted, and who is known to me to be president of the Planters' Bank of Tennessee, and who acknowledged the execution of the above deed as stated therein, for the uses and purposes therein contained.

Witness my hand at office in Nashville, this 3d day of July, 1860.
(Signed) L. P. NICHOL, *Clerk.*

REGISTER'S OFFICE, *July 6th*, 1865.

STATE OF TENNESSEE, *Davidson County:*

The within deed and certificate were received on 3d inst. at 10 o'clock a. m.; entered in note-book 4, page 361, and recorded in book 34, pages 517, 518, 519, and 520.
(Signed) C. W. SMITH, *Clerk.*
By JNO. D. EICHBAUM.

[United States revenue stamps one thousand dollars.]

114 *Answer to amended petition.—Filed January 24th*, 1871.

United States circuit court.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Now comes defendant, and for answer to pl'ff' amended petition filed

herein, set up the same defense and matters as are pleaded and set up in defendant's original and supplemental answer filed herein.

Defendant' pray for judgment and for general relief.

(Signed) LEA, FINNEY & MILLER, *Att'ys.*

Hearing & continuance.—Extract from minutes, January 24th, 1871.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

This cause was called for trial before the court and a jury—

Tho. Hunton, T. A. Clarke, and W. M. Randolph, for pl'ff.

Lea, Finney & Miller and W. H. Hunt, for def'ts—

115 When the following jurors were called and sworn to try the issue:

1. FLORIAN LAUGE.
2. EDWARD BITOT.
3. SAMUEL FLOWER.
4. C. W. BOOTHLY.
5. R. H. ISABELLE.
6. J. F. GRIFFIN.
7. JAMES MILTENBERGER.
8. D. D. ROGERS.
9. ARTHUR THIBAUT.
10. NUMA OLIVIER.
11. F. A. GONZALES.
12. E. BARNETT, JR.

And the jury being complete, the att'ys for the defendant waived the exception filed to the supplemental petition; and, on motion of Thomaas Hunton, esq., att'y for the plaintiff—

It is ordered that he have leave to withdraw the remittitur herein entered on the 21st of March, 1868.

The trial thereupon proceeded, and, after hearing the pleadings and the evidence, the cause is continued till to-morrow at 11 a. m.

Note of evidence.—Filed January 24th, 1871.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

Note of evidence Jan'y 24th, 1871.

Plaintiff offered in evidence doc'ts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
116 11, 12, 13, 14, 15, 16, and 17 & 17 *bis.* Also, drafts and protests A, B, C, and D.

W. A. Johnson, sworn for plaintiff.

Defendant offered doc'ts 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, & 39.

Also, the 3, 28, 34, and 56 drafts in 4 envelopes.

Also, the draft marked X.

R. J. Palfrey, Geo. Jonas, J. G. Gaines, & Hugh Wilson sworn for def'ts.

Continued till to-morrow, 25th.

Bill of exceptions No. 1.—*Filed January 24th,* 1871.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. }

Be it remembered that, on the trial of this cause on the 24th day of

January, 1871, the plaintiff asked leave to withdraw and cancel a remittitur which it had entered, of a part of a verdict which had been rendered on a former trial; to which def't objected that such remittitur was the highest acknowledgment, being an acknowledgment of
117 record, that the amount remitted was not due. But the court overruled the objection, and gave leave to the plaintiff to withdraw and cancel the remittitur entered; to which ruling of the court the defendant then and there objected and excepted, and reserved its bill of exceptions, which is now drawn out at length and approved, signed, and sealed by the judge, at New New Orleans, Louisiana, this 24th day of January, 1871.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Hearing and continuance.—Extract from minutes, Jan'y 25th, '71.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

This cause was resumed, the jurors sworn, and counsel engaged being present; and, after hearing further evidence and argument, the cause is continued till to-morrow at 11 a. m.

Note of evidence.—Filed January 25th, 1871.

U. S. circuit court, district of Louisiana.

118 PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA } No. 4065.

Geo. A. Freret, sworn for def't. Def't offered doc's Nos. 40 & 41, also letter of 9 November, on page 87 in letter-book now in court.

A. Wheeless & E. Garcia sworn for def't.

Pl'ff offered General Order No. 42; also doc't 43.

Def't offered notice, 44.

Pl'ff offered book O, with leave to furnish such extracts as may be necessary.

Bill of exceptions No. 2.—Filed January 25th, 1871.

PLANTERS' BANK OF TENNESSEE *vs.* THE UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this cause, on the 24th and 25th days of January, 1871, the defendant having offered in evidence Special Order No. 202, issued by General N. P. Banks,
119 copy whereof is hereto attached as part hereof, marked A, then offered to prove by John G. Gaines that he was the president of the Citizens' Bank of Louisiana in 1863 when that was issued, and that he went to headquarters to ascertain from General Banks, commanding, whether the Tennessee banks in territory then occupied by the Federal troops were included in that order, and that General Banks, after consideration and discussion, decided that they were, and that the Citizens' Bank was compelled to pay over and did pay over, in compliance with

that order, balances by it due to Tennessee banks and in territory then occupied by Federal troops; to which evidence the plaintiff objected, on the ground that the evidence sought to be introduced was heresay, "res inter alias acta," irrelevant, and immaterial, and the court sustained the objection; to which ruling and exclusion of testimony the defendant excepted then and there, and reserved a bill of exceptions, which is now drawn out at length and approved, signed and
120 sealed by the judge this 25th day of January, 1871.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Copy of order No. 202.—Filed with as part of, and referred to in, defendant's bills of exceptions as Document A.

Document "A," referred to in the foregoing bill of exception and made part thereof.

[Special Order No. 202.—Extract.]

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, Louisiana, August 17th, 1863.

The several banks and banking corporations of New Orleans will, without delay, pay over to Col. S. B. Holabird, chief quartermaster, or to such officer of the Quartermaster' Department as he may designate, all money in their possession belonging or standing upon their books to the credit of any person registered as an enemy of the United
121 States, or engaged in any manner in the military, naval, or civil service of the so-called Confederate States, or shall have been or may hereafter be convicted of rendering any aid or comfort to the enemies of the United States, and all monies in their possession or standing upon their books to the credit of any corporation, association, or pretended government in hostility to the United States. These funds will be held and accounted for by the Quartermaster' Department, subject to the future adjudication of the Government of the United States.

By command of Maj. Gen'l Banks.

(Signed) RICHARD B. IRVIN,
Ass't Adj. Gen'l.

Bill of exception No. 3.—Filed January 25th, 1871.

United States circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this cause, on the 24 &
122 25 of January, 1871, the defendants having offered in evidence Special Order No. 202, issued by General N. P. Banks, copy whereof is hereto annexed and made part of this bill of exceptions, marked A, then offered to prove by the witnesses George Jonas and John G. Gaines, who were on the stand, that when said order No. 202 was issued they were presidents of banks in New Orleans, the former of the Canal Bank, the latter of the Citizens' Bank, and that, in the settlement of balances under that order by their banks and other banks in the city, the commanding general, General Banks, after consideration and discussion, only required confederate treasury notes to the extent

that the balances arose from the receipt of such notes on funds by the banks called on to pay.

Which evidence was objected to by the plaintiff as hearsay, "res inter alios acta," irrelevant, and immaterial, and the objection was sustained by the court and the evidence excluded; to which exclusion of evidence and ruling of the court the defendant then and
123 there excepted, and reserved its bill of exceptions, which is now drawn out at length, approved, signed, and sealed by the judge this 25th day of January, 1871, at the city of New Orleans, in the State of Louisiana.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Reference approved, D. URBAN, *Clerk.*

* Document marked "A," made part of the foregoing bill of exceptions, is to be found transcribed at page 116, 104.*

Exception.—Filed January 26th, 1871.

Circuit court.

PLANTERS' BANK
vs.
UNION BANK.

The defendants, by their counsel, now came into court and peremptorily except to the right of D. Weaver to maintain and prosecute this suit, upon the ground that said Weaver is without authority to sue for and to recover any portion of the plaintiff's claim under color of the appointment, claims to have conferred upon him by the court of chancery at Nashville, and under the proceedings had pursuant thereto. Wherefore defendant' pray that this suit be dismissed.

(Signed) LEA, FINNEY & MILLER,
W'M H. HUNT, *Att'ys.*

124 *Hearing & continuance.—Extract from minutes, Jan'y 26th*, '71.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

This cause was resumed before the court and jury, and, after hearing further argument, the same is continued till to-morrow at 11 a. m.

Motion and order to amending order of 24th inst., and continuance.—Extract from minutes, Jan'y 27th, 1871.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA. } 4065.

This cause was resumed before the court and jury, when, on motion of the attorneys for the plaintiff, it is ordered that the motion to substitute the name of D. Weaver, receiver, as plaintiff, filed herein
125 on the 24th inst., be so far *not*ified as to authorize this suit to be prosecuted in the name of the original plaintiff for the use of D.

Weaver, receiver; and, after hearing further argument, the cause is again continued till to-morrow, 28th instant, at 11 a. m.

Bill of exceptions No. 4.—Filed January 28th, 1871.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this cause, the counsel for plaintiff requested the court to charge, No. 1, as follows, viz: "The jury are instructed that, if they believe from the evidence that the defendants bought or borrowed the confederate currency paid to Captain McClure under order No. 202 after the circulation or trade of such currency had been prohibited in New Orleans by the military authorities, that then such buying or borrowing was unlawful, and the payment to Captain McClure of the confederate currency thus unlawfully obtained cannot in law prejudice the plaintiff, and was not a discharge
126 of the indebtedness of the defendant to the plaintiff."

Upon which the court told the jury that it had held on a former trial of this cause, and still held, that, if the defendant received from the plaintiff confederate money and mixed it with its own funds and used it in its business, and the bank being subject to the military authorities of the United States, and those authorities having prohibited dealing in confederate money, that if, when demand was made upon defendants for payment by Capt. McClure, that bank sent out and borrowed confederate currency, or purchased it, and then paid confederate money to Captain McClure, that it was not a fair liquidation of their debt to the Planters' Bank.

To which remarks and rulings of the court, especially that part of it which affirms or implies the illegality of borrowing or purchasing confederate currency by the defendant and the invalidity of the payment to Mr. McClure under the circumstances, the defendant then and there excepted, and reserved its bill of exceptions, which is approved,
127 signed, and sealed by the judge this 28th day of January, 1871, at the city of New Orleans, State of Louisiana.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Bill of exceptions No. 5.—Filed January 28th, 1871.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this cause, on the 28th day of January, 1871, the court, at the request of the plaintiff, charged the jury as follows, to wit: If the jury shall believe from the evidence that the plaintiff, by its agent, demanded payment of the balance due it before the issuance of order No. 202, and that defendant failed to pay, that then defendant was in default after such demand and failure to pay, and that if any loss was occasioned by the subsequent payment to Captain McClure, under order No. 202, the loss must fall on the defendant, and the plaintiff cannot be properly chargeable therewith.

128 To which charge and ruling of the court the defendant then and there excepted, and reserved a bill of exceptions, which is

now drawn out, approved, signed, and sealed by the judge this 28th day of January, 1871, at the city of New Orleans, State of Louisiana.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Bill of exceptions No. 6.—Filed January 28th, 1871.

U. S. circuit court, district of La.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this cause, on the 28th day of January, 1871, the court, at the request of the plaintiff, charged the jury as follows: That if the jury are satisfied that the defendants were indebted to said plaintiffs, that said indebtedness was not discharged by the delivery to Captain McClure of confederate notes, which had ceased to be of any value at that time. To which charge and
129 ruling of the court the defendant then and there excepted, and reserved its bill of exceptions, which is now drawn out and approved and signed and sealed by the judge this 28th day of January, 1871, in the city of New Orleans, State of Louisiana.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Bill of exceptions No. 7.—Filed January 28th, 1871.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it known that, on the trial of this cause, on the 28th day of January, 1871, after defendant had offered in evidence an order issued at and dated New Orleans, 17th day of August, 1863, by Gen. Banks, then commanding the United States forces in the Department of the Gulf, directing and ordering the banks of New Orleans to pay over to his chief quartermaster or to such officer as he might designate all monies belonging to or standing upon their books to the credit of per-
130 sons registered as enemies of the United States, or in the service of the Confederate States, or who had been or may be convicted of rendering aid to the enemies of the United States, and directing and ordering the payment to said chief quartermaster or officer designated by him of all monies on the books of said banks to the credit of corporations or associations in hostility to the United States, copy of which order is hereto annexed, marked "A," and after defendant had offered evidence tending to prove that the balance of account now sought to be recovered in the suit by plaintiff at the date of said order stood upon defendant's books to plaintiff's credit, that said balance resulted from and was composed of remittances of confederate funds—that is, confederate treasury notes and confederate bonds—by plaintiff to defendant, and from collections by defendant by and with plaintiffs' authority, express and implied, of said confederate treasury notes for plaintiff's account, and passed to plaintiff's credit on defendant's books; that, under said order, said Gen. Banks, commanding United States forces aforesaid, through his military subordinates, and under

said order, exacted and compelled the payment by defendant of said balance standing to plaintiff's credit on defendant's books; that defendant, under said order, exaction, and compulsion aforesaid, had, on the 10th September, 1863, paid in confederate treasury notes said balance to Capt. J. W. McClure, acting quartermaster, the officer designated by said chief quartermaster, who had received the same and given his receipt to defendant therefore, copy whereof is hereto annexed, marked "B;" and after pl'ff had offered evidence tending to prove that said collections and remittances had been passed by defendant to plaintiff's credit in 1862, mingled with defendant's funds by them used in their business; that, in September, 1863, confederate treasury notes had greatly depreciated from that value they possessed in 1862; that, in 1863, and prior to said payment, defendants had been called on by plaintiffs to pay over said balance on their books in United States currency, which was not complied with by defendants; that defendants had, in September, 1863, bought the confederate notes at the rate of 20 cents on the dollar with which said payment was made;

and after defendants had offered evidence tending to prove that when said collections and remittances were made and passed to plaintiff's credit, confederate treasury notes were the only currency in circulation in the States then in rebellion, and the only funds then used by defendants and others in business, and evidence tending to prove that there was an agreement or understanding between defendants and plaintiffs that they should receive and collect confederate treasury notes for plaintiffs, not keep said funds in kind, but pass them to plaintiff's credit, and pay said funds over to plaintiff from time to time on pl'ff's demand or order, the defendant thereupon requested the court to charge the jury as follows:

"That the general commanding the Army of the United States engaged in military operations against the rebels in the late civil war had the legal power to seize and take possession of the property or effects of rebels whenever in their judgment necessary or conducive to the successful prosecution of the war; that the commanding generals were the sole judges (subject alone to the control of their military superiors) of the necessity or expediency of such seazures, and that if the jury find from the evidence that the military authorities exacted payment of the balance on the books of the defendants to the credit of the Planters' Bank and its branches, then that the military authorities thus exacting payment were invested, as regards said payments, with all the rights of a creditor, and it was for them to determine what funds they would receive in payment of the balance on defendant's books credit of plaintiff;" which charge the court gave in part, but struck out of said charge and refused to give the following portions of said charge, to wit:

"And it was for them to determine what funds they would receive in payment of the balance on defendant's books to the credit of plaintiff;" to which ruling and striking out of said part of said charge and refusal of the court to charge as requested, defendants, by their counsel, then and there excepted, and reserved their bill which is now drawn out at length, approved, signed, and sealed at New Orleans, Louisiana, this 28th day of January, 1871.

(Signed) E. H. DURELL. [L. S.]
Judge.

NOTA.—Document "A," referred to in the foregoing bill of exception, to be found transcribed at page 116.

Document "B," referred to in the foregoing bill of exception and made part thereof.—Filed January 28th, 1871,

Twenty-one packages, each to its addresses:

1.	Planters' Bank of Tennessee, Nashville	101,462	39
2.	" " " Memphis	10,331	02
3.	" " " Clarksville	7,450	76
4.	" " " Athens	50	
5.	" " " Murfreesboro	61,363	65
5.	Bank of Tennessee, Nashville	904	74
7.	" Sommerville	7	85
8.	Columbia	359	24
9.	Shelbyville	1,274	79
10.	Clarksville	2,876	28
11.	Sparta	690	50
12.	Trenton	17,144	63
13.	Knoxville	386	19
14.	Union Bank, Nashville	19,900	13
15.	Memphis	25,724	02
16.	Columbia	740	20
17.	Jackson	1,690	10
18.	Bank of Memphis	13,024	63
19.	City Bank, Nashville, (1,214.91)	1,219	91
20.	Bank of Middle Tennessee, Lebanon	18	18
21.	Citizens' Bank, Memphis	160	56
		211,774	77

135 Received the above amount in confederate notes, for which I will give a more formal receipt if required, on presentation of this.

Sept. 10, '63.

(Signed) J. W. McCLURE,
Capt. & A. Q. M.

Bill of exceptions No. 8.—Filed January 28th, 1871.

U. S. circuit court, district of La.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it known that, on the trial of this case, on the 28th day of January, 1871, after defendant had offered in evidence an order issued at and dated New Orleans, 17th August, 1863, by Gen. Banks, then commanding United States forces in the Department of the Gulf, directing and ordering the banks of New Orleans to pay over to his chief quartermaster or to such officer as he might designate, all monies belonging to or standing upon the books of said banks, to the credit of persons registered as enemies to the United States, or in the service of the *service* Confederate States, or who had been or may be convicted
136 of rendering aid to the enemies of the U. S., and directing and ordering the payment to said chief quartermaster or officer designated by him, of all monies on the books of said bank to the credit of

corporations in hostility to the United States, copy of which order is hereto annexed, marked "A," and after defendant had offered evidence tending to prove that the balance of account now sought to be recovered by this suit by plaintiff, at the date of said order stood upon the defendant's books to plaintiff's credit, that said balance resulted from and was composed of remittances of confederate funds, that is confederate treasury notes and confederate bonds by plaintiff to defendant, and from collections by defendant, by and with pla' iff's authority, express and implied, of such confederate treasury notes, for plaintiffs account and passed to plaintiff's credit on defendant's books; that, under said order, said Gen. Banks, commanding U. S. forces aforesaid, through his military subordinates and under said order, exacted and compelled the payment by defendant of said balance standing to pl'ff's credit on defendants books; that
137 defendant, under said order, exaction, and compulsion aforesaid, had, on the 10th Sept., 1863, paid in confederate treasury notes said balance to J. W. McClure, acting quartermaster, the officer designated by said chief quartermaster, who had received the same, and gave his receipt to defendant therefor, copy whereof is hereto annexed marked "B;" and after plaintiff had offered evidence tending to prove that said collections and remittances had been passed by defendant to plaintiff's credit in 1862, mingled with defendant's funds by them used in their business; that, in Sept., 1863, confederate treasury notes had greatly depreciated from that value they possessed in 1862; that, in 1863, and prior to said payment, defendants had been called on by plaintiffs to pay over said balance on their books in U. S. currency, which was not complied with by defendants; that defendants had, in Sept., 1863, bought the confederate notes at the rate of 20 cents on the dollar, with which said payment was made by defendant; and, after defendants had offered evidence tending to prove that at the date
138 when said collections and remittances were made and passed to pl'ff's credit, confederate treasury notes was the only currency in circulation in the States then in rebellion, and the only funds used by defendants or others in business; and evidence tending to prove that there was an agreement or understanding between plaintiffs and defendant, that they should receive and collect confederate funds aforesaid, not keep said funds in kind, but pass the amount thereof to plaintiff's credit and pay said funds over from time to time, on plaintiff's demand or order; that defendant thereupon requested the court to charge the jury as follows: "That if the jury find from the evidence that demand of the pl'ffs, or any part thereof, arose from the receipt of the so-called confederate notes for account of plaintiff and its branches, with their authority, express or implied, and that the military authorities of the United States, under Special Order No. 202, in Sept., 1863, exacted from the defendant payment of said demand, or any part thereof, and accepted payment in confederate treasury notes, and that
139 said payment was made accordingly by said defendant to the military authorities of the United States under compulsion of said authorities, and a receipt in full was given for the amount so paid to said authorities to said defendant then that said payment and receipt are a valid acquittance and discharge of the defendant from any liability to the extent of such part of the demand of the plaintiff as arose from the receipt of the so-called confederate treasury notes for account of the plaintiff and its branches with their authority, express or implied." And the court said as follows: I will give you these instructions with a modification. I will strike out the words "and excepted pay-

ment in confederate treasury notes," the jury will determine what the payment ought to have been. I consider that the military authorities had no right to transact with the defendants in this case; confederate money was then almost worthless, in the discharge of the debt due by the defendant to the Planters' Bank.

To which modification, ruling, and charge and refusal to give
140 charge as asked, the defendant then and there excepted and reserved its bill of exceptions, which is now drawn out at length, approved, signed, and sealed by the judge this 28th day of January 1871.

(Signed) E. H. DURELL, [L. S.]
Judge.

NOTA.—The document marked "A," referred to in the foregoing bill of exceptions to be found transcriped at page 116.

NOTA.—The document marked "B," referred to in the foregoing bill of exceptions, to be found transcribed at page 130.

Bill of exceptions No. 9.—*Filed January 28th*, 1871.

U. S. circuit court, district of Louisiana.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

Be it remembered that, on the trial of this case, on the 28th
141 January, 1871, evidence having been introduced tending to show that, upon being informed of the suspension of specie payment by the banks in New Orleans, in September, 1861, the plaintiff, through its officers, expressed its approval of the measures, and announced an immediate remittance of confederate treasury notes to be placed to its credit, and followed with large remittances of the same funds, and also forwarded confederate bonds for sale on its account, and that such bonds were sold and proceeds placed to its credit. The defendant requested the court to charge as follows, to wit:

"That if the jury find from the evidence that the balance of account sued for is composed, wholly or in part, of direct remittances from the plaintiff to defendant of confederate treasury notes to be placed to credit of pl'ff, and of collections for their account of drafts, actually and in effect and intent, payable in confederate treasury notes, remitted for collections by plaintiff to defendant, and by the latter collected for
account of plaintiff in confederate treasury notes, and that the
142 banks were necessary instruments of the confederate government in putting its issues of confederate treasury notes in circulation, and forcing them upon the country, and that the plaintiff, as one of the banks, willingly lent itself as the instrument of the confederate government to put those issues in circulation, then, that the plaintiff cannot recover such amount of the balance thus composed of treasury notes and 'collections,' which charge the court refused to give; whereupon the defendant then and there excepted to this ruling and refusal to charge as requested, and reserved its bill of exceptions, which is now drawn out, approved, signed, and sealed by the judge at New Orleans, Louisiana, this 28th day of January, 1871.

(Signed) E. H. DURELL, *Judge.* [L. S.]

Bill of exceptions No. 10.—*Filed January* 28*th*, 1871.

U. S. circuit court, district of La.

PLANTERS' BANK OF TENNESSEE
vs.
UNION BANK OF LOUISIANA.

143 Be it remembered that, on the trial of this cause, on the 28th of January, 1871, evidence having been introduced by the defendant tending to show that bonds of the so-called confederate government *sent were* to the defendants for sale by the plaintiff, proceeds to be placed to its account, and that such bonds were sold and the proceeds placed to plaintiff's credit and embraced in the accounts, the balance whereon is herein sued for; and the defendant requested the court to charge the jury that no lawful or valid obligation can arise from the sale of bonds or securities of the confederate government, and no action lies for the proceeds of such bonds; which charge the court refused to give; to which ruling and refusal of the court to charge as requested, the defendant then and there excepted and reserved its bill of exceptions, which is now drawn out at length, and approved, signed and sealed by the judge, on the 28th day of January, 1871, at New Orleans, Louisiana.

(Signed) E. H. DURELL, *Judge.* [L. S.]

144 *Plaintiff's bill of exception.*—*Filed January* 28*th*, 1871.

U. S. circuit court, district of Louisiana.

THE PLANTERS' BANK OF TENNESSEE
vs.
THE UNION BANK OF LOUISIANA. } No. 4065.

Be it remembered that, on the trial of this case, evidence was introduced on behalf of plaintiffs tending to show that defendant was the agent in New Orleans, for the collection of drafts, notes, and bills receivable; that, after the 16th of September, 1861, the pl'ff remitted to the defendant, to be placed to the credit of plaintiff, a considerable amount of confederate currency; that the whole of this confederate currency thus remitted was paid out in kind by the defendant on the checks or drafts of the plaintiff; that the large balance shown to be due to the plaintiff by the amounts rendered by the defendant consisted wholly of collections of notes, drafts, & bills; and that the said accounts and other evidence tended to show the dates at which the collections were made and entered on the books of the bank to the credit of
145 the plaintiff, and used by defendant in its general business; that at the dates when the collections were made by the defendant, the currency in New Orleans was of equal value with United States legal currency at the date of the trial.

Other evidence was adduced on the trial by the defendant, tending to prove that, after September 16th, 1861, the general currency in the city of New Orleans was "confederate currency;" that the plaintiff demanded payment of the balance due to it in August, 1863, except certain special deposits and a check for about $52,483, which had been demanded in February, 1863; and that the value of "confederate currency" in August, 1863, was about 20 cents on the dollar.

And thereupon the plaintiff, by its attorneys, moved the court to charge the jury as follows:

That, "if the jury find from the evidence that defendant received 'confederate currency' on behalf of plaintiff and entered the same to the credit of the plaintiff on the books of this bank, and used the same in their general business, defendant thereby became the debtor of the plaintiff, and the measure of the indebtedness is the value of
146 'confederate currency' in the lawful money of the United States, at the time the credit was entered as aforesaid and the collections were made."

But the court refused to charge the jury as requested, and, in lieu thereof, did charge them that the measure of indebtedness for receipts or collections, made by defendant in "confederate currency" and used by it in its general business was the value of such currency at the date of demand of payment made by the plaintiff, and not at the date when such currency was received and used by defendant in its business.

To which refusal of the court to instruct the jury as requested, and to the charge and instruction given as aforesaid, the plaintiff, by its counsel, then and there excepted before the jury had retired, and tendered this bill of exceptions, which is signed and sealed.

(Signed) E. H. DURELL, *Judge.* [SEAL.]

Verdict and judgment. Extract from judgment docket, January 28th, 1870.

147 United States circuit court, fifth circuit and district of Louisiana. November term, 1870.

NEW ORLEANS, *Saturday, January 28th,* 1871.

Court met pursuant to adjournment.

Present, Hon. E. H Durell, district judge.

PLANTERS' BANK OF TENNESSEE *vs.* UNION BANK OF LOUISIANA. } 4065.

This cause was resumed, and, after hearing further argument and receiving a charge from the court, Samuel Flower was appointed foreman of the jury, and, at ¼ past 2 p. m., they retired to consider on their verdict.

At 11 o'clock p. m. they returned into court and delivered the following verdict, to wit:

We, the jury, find in favor of the plaintiff for twenty-four thousand seven hundred and thirteen $\frac{79}{100}$ dollars, ($24,713.79,) with legal interest from September 15th, 1863.

January 28th, 1871.

SAMUEL FLOWER.
Foreman.

Whereupon it is ordered that the verdict be recorded, and that, in accordance therewith, the Planters' Bank of Tennessee for the use of D. Weaver, receiver, do have and recover from the Union Bank
148 of Louisiana the sum of twenty-four thousand seven hundred and thirteen dollars and 79 cents, with legal interest from September 15th, 1863, till paid, and costs of suit.

Judgment rendered January 28th, 1871.
Judgment signed February 14th, 1871.
(Signed) E. H. DURELL, *Judge.*

Agreement.—Filed January 30th, 1871.—4065.

It is agreed that the court shall delay signing the judgment in the above case, until the bills of exceptions are prepared and signed.
January 30th, 1871.
(Signed) THO. HUNTON,
For Plaintiff.
H'NY'L MILLER,
For Def't.

Petition and order for writ of error.—Filed February 18th, 1871.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

149 The Planters' Bank of Tennessee, suing for the use, &c., respectfully shows that, in a certain suit before this hon. court, No. 4065, in which the said Planters' Bank, for use &c., is plaintiff, and The Union Bank of Louisiana is defendant, there is manifest error in the final judgment rendered in said case to the prejudice of plaintiff. The said plaintiff therefore prays for a writ of error to the Supreme Court of the United States, on giving bond in conformity to law, and that the Union Bank of Louisiana be cited to answer the same, and for general relief.
(Signed) THO. HUNTON,
Att'y for Pl'ff.

A writ of error is allowed in this case, as prayed for, returnable to the Supreme Court of the U. S., the first Monday of December next, the petitioner giving bond in the sum of $500 with surety, according to law.
Feb'y 18th, 1871.
(Signed) E. H. DURELL, *Judge.*

150 *Bond for writ of error.—Filed February 18th, 1871.*

Know all men by these presents that we, The Planters' Bank of Tennessee, for the use, &c., as principal, and William A. Johnson and J. P. Davis as sureties, are held and firmly bound unto The Union Bank of Louisiana, in the full and just sum of five hundred dollars, to be paid to the said Union Bank of Louisiana, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally, by these presents, sealed with our seals, and dated this 18th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, No. 4065, wherein The Planters' Bank of , for the use, &c., was plaintiff, and The Union Bank of Louisiana was defendant, judgment was rendered against the said de-
151 fendant, and the said Planters' Bank of Tennessee having obtained a writ of error, and filed a copy thereof in the clerk's

office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Union Bank of Louisiana, citing and admonishing the said Union Bank to be and appear at a Supreme Court of the United States to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Planters' Bank of Tennessee, shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

The Planters' Bank of Tennessee, for use, &c., D. Weaver, &c.

By THO. HUNTON, *Attorney.* [L. S.]

(Signed] W. A. JOHNSON. [L. S.]

(Signed) J. P. DAVIS. [L. S.]

Sealed and delivered in the presence of—

Petition and order for writ of error.—Filed February 24th, 1871.

152 To the honorable the judges of the circuit court of the United States of America for the fifth circuit and district of Louisiana:

The petition of the Union Bank of Louisiana, a corporation established by law, domiciled in New Orleans, show with respect:

That petitioner is advised and believes that there is manifest error to the damage and prejudice of petitioner, in the final judgment rendered by the court in the suit of The Planters' Bank of Tennessee vs. The Union Bank of Louisiana, No. of the docket of the court, and signed on the 14th February, 1871, in favor of said Planters' Bank of Tennessee, for the use of D. Weaver, receiver, against said Union Bank of Louisiana, for twenty-four thousand seven hundred and thirteen $\frac{79}{100}$ dollars, with 5 % interest from 15th September, 1863, and cost, as appears by reference to said judgment, specially referred to for fuller explanation and greater certainty; and petitioner is desirous of obtaining and prosecuting a writ of error from said judgment, to operate as a supersedeas, to the Supreme Court of the United States.

153 Wherefore petitioner prays that a writ of error be allowed to petitioner, returnable to the Supreme Court of the United States, as directed by law; that the same operate as a supersedeas, upon petitioner executing bond with good and sufficient security in such amount as the court shall direct, conditioned according to law; that said writ be served and citation issue to and be served upon the adverse party as required by law, and for general relief.

(Signed) LEA, FINNEY & MILLER, *Att'ys.*

Order.

A writ of error, to operate as a supersedeas, is allowed in this case, as prayed for, and, according to law, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of fifty-five thousand dollars, with good and solvent security, conditioned as the law directs.

February 24th, 1871.

(Signed) E. H. DURELL, *Judge.*

154 *Bond for writ of error.—Filed February 24th*, 1871.

Know all men by these presents that we, The Union Bank of Louisiana, as principal, C. Kohn, John Phelps, Walter Pugh, M. M. Simpson, Theodore Helleman, F. Van Benthuysen, Leon Godchaux, and H. W. Farly as sureties, are held and firmly bound in solido unto the Planters' Bank of Tennessee, for the use of D. Weaver, receiver, in the full and just sum of fifty-five thousand ($55,000.00) dollars to be paid to the said The Planters' Bank of Tennesssee, for the use of D. Weaver, receiver, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the 24th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately at a circuit court of the United fifth judi-
155 cial circuit, holding sessions in and for the district of Louisiana, at New Orleans, in a suit depending in said circuit court, wherein The Planters' Bank of Tennessee, for the use of D. Weaver, receiver, plaintiff, and The Union Bank of Louisiana, judgment was rendered against the said The Union Bank of Louisiana, defendant, and the said The Union Bank of Louisiana having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation, directed to the said The Planters' Bank of Tennessee, for the use of D. Weaver, receiver, citing and admonishing the said Planters' Bank of Tennessee, for the use of D. Weaver, receiver, to be and appear at a Supreme Court of the United States to be holden at Washington, the Monday of next:

Now, the condition of the above obligation is such, that if the said The Union Bank of Louisiana shall prosecute its writ to effect, and
156 answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) C. KOHN.
(Signed) JOHN PHELPS.

For the Union Bank of Louisiana—

(Signed) By C. KOHN, *Pres.*
(") WALTER PUGH.
(") M. M. SIMPSON. [L. S.]
(") THEODORE HELLEMAN. [L. S.]
(") F. VAN BENTHUYSEN. [L. S.]
(") LEON GODCHAUX.
(") H. W. FARLEY.

Sealed and delivered in the presence of—
(Signed) GEO. A. FRERET.
(Signed:) HENRY L. MILLER.

157 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 156 pages contain and form a full, complete, true, and perfect

transcript of the record and proceedings had on the trial of the case of The Planters' Bank of Tennessee vs. Union Bank of Louisiana, No. 4065 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans, this 10 day of June, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

[5-c't. int. rev. stamp canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 10 day of June, A. D. 1871.

E. H. DURELL, *Judge.*

[5-c't. int. rev. stamp, canceled.]

158 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between The Planters' Bank of Tennessee, for the use, &c., and The Union Bank of Louisiana, a manifest error hath happened, to the great damage of the said plaintiff, The Planters' Bank of Tennessee, as as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 18th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

159 (Indorsed:) United States circuit court. No. 4065. The Planters' Bank of Tennessee, for use, &c., pl'ff in error, versus The Union Bank of La. Louisiana. Writ of error. Filed February 18th, 1871.

F. B. VINOT, *D'y Clk.*

160 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or one of you, between The Planters' Bank of Tennessee, for the use, &c., and The Union Bank of Louisiana, a manifest error hath happened, to the great damage of the said Union Bank of Louisiana, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States this 24th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

161 (Indorsed:) United States circuit court. No. 4065. Union Bank of Louisiana, pl'ff in error, versus The Planters' Bank of Tenn., for the use, &c., def't in error. Writ of error.

162 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to the Union Bank of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & writ of error, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein The Planters' Bank of Tennessee, suing for the use, &c., is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition & writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this twentieth day of February, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

163 (Indorsed:)
Union Bank of Louisiana. United States circuit court. No.

4065. The Planters' Bank of Tennessee, for the use, &c., pl'ff in error, vs. The Union Bank of Louisiana, def't in error. Citation in error.

Marshal's return.

Received Feb. 20, 1871, by the U. S. marshal, and, on the 24th day of May, 1871, served a copy of the within citation in error on the Union Bank of Louisiana, defendant in error mentioned within, by delivering the same to Carl Kohn, president thereof, in person, at the banking-house of said Union Bank, on Carondelet st. between Canal & Common streets, in this city.

New Orleans, May 24th, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 24th day of May, 1871, personally appeared before me the subscriber, S. W. Reed, and made oath that he delivered a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me this 24th day of , 1871.
F. B. VINOT, *D'y Clk.*

164 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to the Planters' Bank of Tennessee, for the use of D. Weaver, receiver, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the first Monday of December next, pursuant to a petition & a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein The Union Bank of Louisiana is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said petition & writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25th day of February, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

165 (Indorsed:)

The Planters' B'k of Tenn. United States circuit court. No. 4065. Union Bank of Louisiana, pl'ff in error, vs. The Planters' Bank of Tennessee, for the use, &c., deft in error. Citation.

Marshal's return.

Received Feb. 27, 1871, by the U. S. marshal, and, on the 26th day of May, 1871, served a copy of the within citation in error on the Planters' Bank of Tennessee, defendant in error named within, by delivering the

same to Tho's Hunton, attorney, in person, in the custom-house buil'-ing at this city.

New Orleans, May 26th, 1871.

[4 words erased.]

S. W. REED,
D'y U. S. Marshal.

On this 26th day of May, 1871, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a copy of the within citation, as stated in his official return hereon.

S. W. REED.

Sworn to and subscribed before me.

F. B. VINOT, *D'y Clk.*

(Indorsement on cover:) No. 378. The Planters' Bank of Tennessee, plaintiff in error, vs. The Union Bank of Louisiana. Filed 14th November, 1871. And No. 405. The Union Bank of Louisiana, plaintiff in error, vs. The Planters' Bank of Tennessee. Filed 24th November, 1871. Louisiana C. C. U. S.

SUPREME COURT OF THE UNITED STATES.

No. 147.

THE PLANTERS' BANK OF TENNESSEE, PLAINTIFF IN ERROR,

vs.

THE UNION BANK OF LOUISIANA.

CERTIORARI AND RETURN.

FILED JANUARY 11, 1873.

1 OFFICE OF PROVOST-MARSHAL-GENERAL,
DEPARTMENT OF THE GULF,
208 CARONDELET STREET,
New Orleans, April 4th, 1863.

[Rec'd ¼ 11 o'c'k 6th. Rec'd 1½ o'c'k 6th.]

Pres't A. PENN, of the Union Bank:

SIR: Your immediate attention is called to the following, viz:

HEADQUARTERS DEPARTMENT OF THE GULF,
19th ARMY CORPS, *New Orleans, April* 2, 1863.

[Special Orders No. 87.—Extract.]

* * * * * *

6. The several banking corporations or companies of New Orleans are hereby required to make to the provost-marshal-general, under oath of the presidents and cashiers thereof, a statement of the condition and affairs of their respective institutions, in conformity with the provisions of the revised statutes of the 2 State of Louisiana, under chapter "banks," sections 29 and × 31, as they stood on the 28th day of March, 1863, with a list of deposits and depositors, & of the stockholders thereof.

Era Newspaper, 3rd Apr., Friday.

By command of Major-General Banks.

RICHARD B. IRVIN,
A. A.-General.

By command of Brig'r-Gen'l Bowen, provost-marshal-general.

Respectfully,

HENRY L. PIERSON, JR.,
Captain & A. A. G.

UNITED STATES CIRCUIT COURT,
FIFTH CIRCUIT AND DISTRICT
OF LOUISIANA, CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original document, numbered 18, offered in evidence by the defendant January 24th, 1871, and on file in the case entitled The Planters' Bank of Tennessee vs. The Union Bank of Louisiana, No. 4065 of the docket of said court.

Witness my hand and seal of said court, at New Orleans, this 4th day of January, 1873.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

(Indorsed:) No. 4065. U. S. circuit court. The Planters' Bank of Tennessee vs. The Union Bank of Louisiana. No. 18. Offered in evidence by defendant. January 24th, 1871.

REC. 147—1

DR. *Br. Planters' B'k, Tenn., Memphis, in account with the Union Bank of Louisiana, New Orleans.* **CR.**

1861.					1861.			
June	7	To pro. 6645, Henkell & Co., n. p., 1,100		6 40	May	31	By balance ac. rend'd	6,343 23
	10	" " 6646, Scruggs, D., & Co., " 5,000		5 24	June	2	" error, 10 Ap'l, pro. Metcalf, n. p.	5 62
	11	" 666, J. Baker		485 15		5	" dep. by B'k of La	2
	18	" 696, Shepherd		50 43		11	" Brown, J., & Co	725 05
	19	" 6693, Johnson & Co., n. a., 500		5 25	Aug.	8	" 6685, Cooper & Co 10,500	
	21	" 6659, Nelson & Co., n. p., 2,500		5 70		"	" 6686, do., 10,500	
July	1	" 6669, do., " 1,500		5 70				21,000 00
Aug.	9	" 6690, Barrelle & Co., " 2,000		5 15				
	10	" balance		27,506 93				
				28,075 95				28,075 95
Aug.	12	To pro. 6691, Barrelli & Co., 5,000		4 60	Aug.	10	By balance ac. rend'd	27,506 93
	23	" 698, Speed, D. S		90 90		13	" Cooper & Co	10,000
	24	" 697, Jack & T		260 68		14	" Henderson & P	367
	31	" 700, Shepherd & D. C		3,000		26	" Pemberton	200
Sept.	5	" D. Weaver, per tel. dis		10,000	Sept.	5	" Dudley & N	50
	11	" 699, Monsacat		25		23	" Perkins & Co 5,000	
	"	" 702, Shepherd & M $5,000				"	" Rotchford, B., & Co 50	
	"	" 703, do. 2,000						5,050
				7,000		25	" J. Watt & Co	180
	13	" 701, Montrieul, cash		450 95		27	" do.	90
	16	" 652, Jones & Co		1,090				
	17	" 704, Pemberton Pt		200				
	21	" 705, Shepherd & M		5,000				
Oct.	8	" 6692, Gallaway, n. p., 1,600		4 60				
	"	" balance		16,407 20				
				43,443 93				43,443 93
Oct.	9	To 706, Gunnison		258 38	Oct.	8	By balance ac. rend'd	16,407 20
	16	" Coll. T. P. Aydlett		3,700		16	" 162, Simms & Co., our check	3,700
	19	" pro. 12,909, Nelson & Co., n. p., 845		5 15		28	" Mer. & Tr. B'k	8,000
	25	" 707, Jack & Y		185 22	Nov.	4	" 13014, Bradley, N., & Co	550
	26	" 708, Jones		200		6	" Thompson & Co 1,366	
	28	" 709, Ferrer & Co		2,922 65		"	" City B'k 391,25	
	30	" 710, Crescent off		10				1,757 25
Nov.	11	" 711, Jack & S 76 54				12	" 6918, Kennedy & Co	3,000
	"	" 712, Valentine & Co 2,429 94				14	" Thompson & Co	122 53
				2,506 48		19	" Spearing & Co	2,000
	14	" 6706, Skipwith, n. p., 1,250		5 15		22	" Merch'ts' B'k	500
	19	" 6679, McL., R. & Co., 4,301.07		4 60		25	" Letchford & Co 1,576 95	
	22	" Carson & A		25		"	" Mec. & Tr. B'k 9,500	
	25	" 714, Ferrer & Co		16 65		"	" Merch'ts' " 500	
	27	" 715, do.		407 36		"	" Tr. Confe. States 51	
	28	" Treas. C. States ret. pble. Rich'd		51				11,627 95

4

Dec.	2	" 716, Dow	500	
	"	" 719, Isler	150	
	"	" 720, do.	325	
				975
	4	" 718, Ward & M. E.		248 56
	6	722, Buchannan		4 60
				1,500
		Am't for'd		13,025 80

4

1861.		To am't for'd	13,025 80
Dec.	9	" 717, Jack & S	122 08
	"	" pro. 13194, Given, W. & Co., n. a., 280	4 60
	10	" 723, Buchannan	400
	"	" balance	94,522 76
			108,075 24

Dec.	12	To 721, Barrow		340
	"	" 724, Buchannan		1,000
	16	" 726, do.	1,845 10	
	"	" 727, do.	1,492 49	
	"	" 731, do.	1,600	
	"	" 728, Dow	500	
	"	" 729, Ward, McC	932 40	
	"	" 730, do.	175 50	
				6,545 49
	17	" 732, Buchannan	1,000	
	"	" 733, Ockford	465 52	
	"	" 735, Gwynn	265 38	
				1,730 99
	18	" 734, Jack & T		600
	19	" 725, Semmes		1,000
	"	" pro. 6680, McL., R. & Co., 4,347.84		5 15
	20	" 736, Meahan & G	5,000	
	"	" 737, Kelly & Co	370 63	
	"	" 738, Ferrer & Co	589 80	
	"	" 739, Gwynne	4,000	
				9,960 43
	21	" 740, Buchannan		800
	24	" 741, Steele & Co	2,000	
	"	" 742, Gover	1,470	
	"	" 743, Buchannan	50	
	"	" 744, Budeke & Co	260 86	
	"	" 745, Dow	1,400	
				5,630 86
	"	" 6715, Nelson & Co., n. p., 5,000		5 70
	26	" 746, Farrington & Co		2,000
	26	" Spearing & Co		1,000
Dec.	5	" Crescent off	150	
	"	" B'k of La	2	
				152
	6	" post-office w't		8,753 06
	10	" Confederate States, p'r Johnson		50,000
	11	" 6693, Johnson & Co		505 25
		Am't for'd		108,075 24

1861.			
		By am't for'd	108,075 24
Dec.	10	By balance ac. rend'd	94,522 76
"	14	" 6684, Williams & Co. ac	716 90
"		" 6722, Kennedy & Co	1,318 43
	16	" Citizens B'k	2,000
"		" do.	2,000
			4,000
	17	" Howell, G., & Co	329 78
	19	" Oglesby & Mc	987 20
	21	" 13193, Kelly, ag't	2,350
	23	" Roper, P., & Co	350 13
	24	" 6725, Johnson & Co	2,500
"		" B'k N. O	250
			2,750
	26	" Br. State B'k	1,250
	27	" Canal "	639 19
	30	" 6727, Johnson & Co	1,000
	31	" 6723, Kennedy & Co	5,500
1862.			
Jan.	2	" T. A. Hamilton	565 24
	7	" 6729, Johnson & Co	1,000
	11	" 6732, do.	1,731 56
	14	" 6737, do.	1,497 77
	16	" Payne, H., & Co	150 95
	20	" Cooper & Co	2,500
"		" Oglesby & M	1,562 10
"		" Henderson & H	135 71
			4,197 81

DR. *Br. Planters' B'k, Tenn., Memphis, in account with the Union Bank of Louisiana, New Orleans.*—Continued. CR.

	"	" 747, Buchannan		800			
	"	" 3 maps of S. C		1 50			
	27	" 749, Semmes	871 13				
	"	" 750, Wright & Co	352 40				
				1,223 53			
	28	" 748, Payne, H., & Co	267 22				
	"	" 751, Farrington	843 52				
	"	" 752, Day, H. S	246 82				
				1,357 56			
	"	" 753, Buchannan		1,500			
	30	" 13194, Given, W. & Co., n. p., 280		4 60			
1862.							
Jan.	3	" 754, Buchannan	1,200				
	"	" 756, Alexander	1,000				
				2,206			
	6	" 758, Speed, D. & S		4,000			
	7	" 755, Buchannan	850				
	"	" 757, Maize	2,500				
	"	" 760, Buchannan	5,500				
				8,850			
	9	" 759, Day & S		2,000			
	"	" 6228, Harris, n. p., 1,811.09		4 60			
	10	" Oglesby & M., 31 Dec., 1,019.10		5 15			
	"	" 761, Steele & Co		2,000			
	"	" 762, Buchannan		500			
		Am't for'd		54,065 47		Am't for'd	124,857 72
5		To am't for'd		54,065 47	1862.	By am't for'd	124,857 72
1862.							
Jan.	11	" 763, Colcord	1,975				
	"	" 764, Holt	300				
	"	" 766, McC. & Co	816 26				
				3,091 26			
	13	" 770, City B'k	5,000				
	"	" 773, Trabue	1,496 25				
				6,496 25			
	14	" 772, Dow	600				
	"	" 774, Buckanan	2,000				
				2,600			
	"	" Pro 13,296, Hollingsworth & Co. n. p., 1,775. 92		6 80			
	16	" 765, Gwynn	1,000				
	"	" 769, Speed, D. & S	796				
	"	" 775, Todd & G	10,000				
				11,796			
	17	" 776, Jack & S		121 66			
	"	" Pro. 6,717, S. D. & Co., n. p., 5,000		5 15			

	20	" 779, Lyons		111 27
	21	" 771, Gwynne	1,216	
	"	" 778, Burditt	3,000	
	"	" 780, do.	2,000	
	" 7	" 781, Buchanan	6,000	
	"	782, Smith	859 60	
				13,075 60
	"	Pro. 6,712, Nelson & Co., n. p., 2,600		5 75
	"	Balance		33,482 51
				124,857 72
1862.				
Jan.	24	To 777, Buchanan, 600, 784, Dow 500		1,100
	25	" 767, Clark, G. & Co		108 42
	"	" 785, Tate		4,000
	28	" Coll. Griffing		500
	"	" Pro. 6,720, B. B. & Co., n. p., 600		5 15
	29	" 787, Hessee, L. & Co	8,000	
	"	" 788, Buchanan	700	
	"	" 789, Copit, H. & Co	11,000	
				19,700
	31	" 790, Montrieul, cash		124 70
Feb.	1	" 791, Payne, H., & Co	287 63	
	"	" 793, Jack & S	300 25	
				587 88
	3	" 792, Jones & Co	27 50	
	"	" 794, Golbreithe & E	798	
				825 50
	4	" 768, Speed, D. & S	448 33	
	"	" 795, Dow	200	
	"	" 796, Perkins & Co	1,156 61	
				1,804 94
	5	" 797, Trabue	997 50	
	"	" 798, Jack & S	1,500	
				2,497 50
	8	" 800, Hart & Co		81 93
		Pro. 6721, Gallaway, n. p., 1,683.33		4 60
	10	801, Jones & Co		237 96
	12	799, Bethell	1,500	
	"	802, Jack & S	500	
	"	805, McCombs & Co	718 98	
	"	806, do.	3,400	
				6,118 98
	13	783, Farrington	2,500	
	"	803, Jack & S	160 25	
				2,660 25
		Am't for'd		40,357 81

1862.				
Jan.	21	By balance ac. rend'd		33,482 51
	25	" Union B'k		1,500
	28	" Galbaith & P	397 15	
	"	" Harris, B. & Co	377 70	
				774 85
	"	" Confed. notes, per Shepherd, cash		150,000
	31	" Post-office w't		53 63
Feb.	3	" Citiz. B'k	250	
	"	" Creevy & F	200	
				450
	7	" 6742, Kennedy & Co		5,000
	8	" B'k of La		2,000
	10	" Merch'ts' B'k		135
	"	" Sanders, Mobile	104	
	"	" Walker, "	100	
			204	
	"	" Less ½ p'r	50	
				203 50
	11	" E. Conevy	1,261 90	
	"	" Do.	607 57	
				1,871 47
	13	13,333, Connolly & Co		1,000
	14	Bartley, J. & Co		500
	17	Volsin & D		263 67
	18	Collie & Bro	104	
	"	Harris, B. & Co	496	
				600
	24	6,752, Kennedy & Co		4,000
	25	T. Keep	1,500	
	"	Morton & M.	500	
				2,000
		Am't for'd		203,834 63

1862.		To am't for'd		40,357 81	1862.	By am't for'd	203,834 63
Feb.	14	807, Pace		3,219 75			
	15	808, Jack & S		655 42			
	17	817, Perkins & Co		17,500			
	18	809, Galbreath & P	174 43				
	"	810, do	1,243 35				
	"	811, Wright & Co	225 14				
	"	816, Craft & Co	100				
	"	819, Pace	2,932 52				
				4,675 44			
	19	786, Buchannan	706 51				
	"	815, Perkins & Co	4,823 50				
	"	818, Burdett & Co	1,000				
				6,530 01			
	24	826, Semmes	2,543 60				
	"	827, Pace	3,000				
				5,345 60			
	"	840, do		4,000			
	25	824, Nixon & Co	4,000				
	"	825, Farrington & Co	2,251 22				
	"	831, Buddeke & Co	1,474 47				
				7,725 69			
	26	832, McCombs & Co	4,075				
	"	833, Gwynne	10,000				
	"	835, Maize	4,000				
	"	836, Dow	1,000				
	"	837, Gwyn	1,000				
	"	838, Buchanan	1,500				
				21,575			
	"	Pro. 13,376 Bradley, n. p., 3,500		7 05			
	27	834, Craft & Co		497 50			
		Balance		91,745 36			
				203,834 63			203,834 63
1862.					1862.		
M'ch	1	To 841, Wallis & Co		1,107 28			
	"	842, Buchanan		3,000		27 By balance ac. rend'd	91,745 36
	"	820, Machon & G	10,000		M'ch	8 Union B'k	200,000
	"	821, do.	10,000				
	"	822, do.	10,000				
	"	823, do.	10,000				
	"	846, Mount & Co	6,381 55				
				46,381 55			
	4	843, Henderson		150			
	8	829, White & Co	2,000				
	"	830, do.	2,000				
				4,000			

11		850, Galbreath & P.	1,513 90				
"		851, do.	320 48				
"		852, Patton, H. & Co.	15,000				
"		894, do.	20,000				
				36,834 38			
"		Pro. Palpey, n. p., 600		5 70			
"		" 'a Silva, " 260		5 70			
14		" 13,439, Gordy, " 350		5 15			
"		" 13,440, Kemper, " 847.50		5 70			
15		855, Shepherd & M.		15,000			
17		849, Foster		699 96			
"		814, Menge		170			
19		839, Jones & Co.		397 10			
24		844, Stewart		498 75			
25		857, Fellowes & Co.		1,000 00			
26		856, Violett & Co.		369 50			
		Balance		182,114 59			
				291,745 36			291,745 36
M'ch	28	To 804, McCombs & Co.		94 85	M'ch	26	By balance ac. rend'd	182,114 59
	29	858, Buchanan		250	Ap'l	19	Union Bank	103 04
Ap'l	12	847, Winter		173 75	May	31	C. W. Hopkins	64 50
	15	848, Bethel		2,639 30				
	24	Pro. Maxent, 600		2				
May	15	853, Speed, D. & S.		1,538 25				
	22	Confederate States notes		163,500				
Dec.	11	828, A. J. White & Co.		2,000				
1863.								
M'ch	19	845, Ford & H.		1,752 96				
Sept.	10	Am't paid J. W. McClure, A. Q. M., under order No. 202, 17 Aug., 1863, see protest 10 Sept., 1863, before Hugh Madden, n. pub.		10,331 02				
				182,282 13				182,282 13

CIRCUIT COURT OF THE UNITED STATES,
FIFTH CIRCUIT AND DISTRICT OF LOUISIANA,
CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original document numbered 3, offered in evidence by the plaintiff January 24th, 1871, and on file in the case entitled The Planters' Bank of Tennessee vs. The Union Bank of Louisiana, No. 4065, of the docket of said court.

Witness my hand and seal of said court, at New Orleans, this 4th day of January, 1873.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

(Indorsed:) No. 4065. U. S. circuit court. The Planters' Bank of Tennessee vs. The Union Bank of Louisiana. No. 3. Offered in evidence by plaintiff January 24th, 1871.

1861.					
Aug't	16	To 8310, Weaver cas		8,969	92
Sept.	2	6484, L. W. Gack, n. p., 900		5	30
	7	8328, Weaver cas		4,600	
	14	Silver by express & expenses		1,464	59
	16	8335, Weaver cas		5,300	
Oct.	7	6504, Given, W. & Co., n. p., 450		5	90
	15	8345, Lewis & G		400	
	19	8346, sent K. & Co		3,000	
	26	6525, Fellowes & Co., n. p., 7,500		5	90
		6526, do. 7,500		5	90
	28	8351, Kropp		1,000	
	29	8353, Given, W. & Co		3,125	13
		6652, Fellowes & Co., n. p., 7,500		5	90
		6651, do. 7,500		5	90
	30	8355, Lewis & G	500		
		8357, Given, W. & Co	1,655 04		
				2,155	04
	31	8356 Glenn cas		311	41
Nov.	1	Pro. 6104, Hilliard, S. & Co., 2,666.57		2	60
	2	8133, Samuel		495	05
	7	8360, Wisdom		1,100	
	9	6635, Given, W. & Co., 2,500		5	90
	16	8349, Barksdale		370	
	19	8363, Fraser		300	
	22	Pro. B. H. Short & Co., n. p., 537.49		5	30
	25	8374, H. Dunlop		3,500	
	26	8375, Lewis & G		1,500	
Dec.	2	8341, Winston		25	
	3	8373, Wilson		100	
		8358, Given, W. & Co		129	80
	4	6559, do. n. p., 1,546.38		6	50
	7	8383, Ligun & Co		27	50
		8378, Ruskling	1,000		
		8379, do.	500		
		8380, do.	500		
	11			2,000	
		8306, Taliaferro	50		
		8383, Wilson	100		
		8384, Lewis & G	1,200		
				1,350	

1861.					
Aug.	14	By balance ac. ren'd		8,387	77
	16	W. G. Robinson		1,120	58
	17	Given, W. & Co		1,140	96
	19	6468, C. H. Smith	1.500		
	"	6469, do.	2,000		
				3,500	
	24	6473, do		417	52
	27	Paid express 11 May		1	
	31	6483, Given, W. & Co., pro. n. p		805	62
Sept.	12	Poindexter & Co		462	09
	14	C. A. Smith	5,000		
	"	McFarland & B	100		
				5,100	
	27	Poindexter & Co		171	83
	30	6497, Given, W. & Co		4,000	
Oct.	3	Canal Bank		100	
	7	Given, W. & Co		400	
	11	6540, C. H. Smith		1,278	77
	12	6606, Given, W. & Co		1,000	
	14	6576, do.		1,000	
	17	Poindexter & Co		899	35
	19	6517, Given, W. & Co		2,173	46
	26	6629, do.		935	
	29	Anderson & Co		360	42
		A. Bruen		222	86
	31	C. H. Smith		2,000	
Nov.	4	Given, W. & Co		39	05
	9	6601, Murrell & B	500		
	"	6603, do.	600		
	"	C. H. Smith	1,501 25		
				2,601	25
	14	Given, W. & Co		1,250	
	"	Hilliard, S. & Co., inter., 2,666.57		139	75
	18	6614, Johnson & Co	600		
		J. Turner	800		
				1,400	
	19	6616, Given, Watt & Co		800	
	20	Citiz. Bank n		2,500	
	21	Gunther, R, & Co		5,254	62
	26	6617, Given W. & Co		318	50
	27	C. H. Smith		2,000	
	28	F. W. Smyth	1.500		
	"	J. Turner	525		
				2,025	
	30	6635, Given, W. & Co	850		
		6596, do	1,000		
				1,850	

Office Planters' Bank Tenn., Clarksville, in ac. with Union Bank of Louisiana.—Continued.

				41,278 54
8				
1861.				41,278 54
Dec.	14	8389, Lewis & G	400	
	17	8392, Given, W. & Co	9,377 50	
	19	8387, Kent	25	
	23	8403, Weaver cas	20,000	
	24	8404, Ligan & Co	25 40	
	31	8409, Lewis & G	10,000	
1862.				
Jan'y	7	8415, Ligan	1,000	
	9	8410, Lewis & G 4,000		
		11, do. 995		
			4,995	
	11	8422, Given, W. & Co	5,200	
	13	8425, do.	1,414 43	
	14	8407, McTurman	25	
	15	8430, Ligan & Co 150 14		
		8431, Forbes & P 6 55		
	18		56 69	
		Pro. 6546, Given, W. & Co., n. p., 2,696.35	7 10	
		6547, do. 2,696.35	7 10	
		6548, do. 2,696 35	7 10	
		6555, do. 2,696.35	7 70	
	20	6673, Campbell & S., 170	6 50	
	22	Pro. 167, J. B. Morison & Co., 760.26	5 30	
	29	6627, Smyth, n. p., 2,500	5 90	
		8348, Barksdale	400	
	30	Pro. 6628, Smyth, n. p., 2,000	5 90	
Feb'y	4	8451, Roberts	18 55	
	10	8460, Wilson	100	
	11	8447, Allen	995 03	
Dec.	3	6561, Gunther & Co		2,38 06
	4	6636, Leids & Co		2,086 61
	5	A. D. Kelly & Co		100
	9	6602, Murrell & B 1,000		
		Union Bank 650		
		Smythe 3,500		
				5,150
				63,230 07
1861.				63,230 07
Dec.	13	C. H. Smith		305 94
	14	6578, do. 18	4,996 17	
		6580, do. "	499 67	
		6084, do. 22	699 07	
		6591, do. 30	698 14	
		6592, do. "	4,986 67	
		6578, do. "	491 34	
				12,371 56
	20	6519, Given, W. & Co		3,451 30
	24	Br. State Bank		498 42
	30	6530, Given, W. & Co		1,427 70
		6655, Gunther, R. & Co., p'd dis		1,030 08
	31	6597, Given, W. & Co		1,200
1862.				
Jan'y	2	6598, C. H. Smith		1,000
	4	6658, Pollard & A. C		3,418 67
	7	6536, Given, W. & Co 3,613		
		6538, do. 1,057 50		
				4,670 50
	9	F. W. Smyth		4,000
	10	6604, Murrell & B		800
	11	6607, M. Long, 11-14, Bu.		660 68
	13	Poindexter & Co		2,247 27
	14	6608, C. H. Smith 1,000		
		F. W. Smith 2,500		
				3,500
	15	6543, Given, W. & Co		2,156 55
	18	6615, C. H. Smith		3,000
		9660, Gunther & Co., 2 May, 1,737.59		1,697 42
	20	6545, Turner, 21		3,686 70
	22	6672, C. H. Smith		2,000
	24	6619, N. Long, 26		2,000
	25	6618, C. H. Smith		1,200
	28	6642, Dr. 14 Feb'y, 618.54		616 24
	"	6557, Turner 2,823 76		
		6621, Murrell & B 500		
	29			3,323 76

			95,363 74	
9				
1862.			95,363 74	
Feb.	12	To 8433, Moller	1,000	
	"	8435, do.	500	
			1,500	
	"	Pro. 167, Morrison, n. p., 760.26	5 30	
	18	8445, Moore	917 42	
	24	6585, Wisdom, n. p., 4,000	5 90	
		6588, Given, Watts & Co., 1,403.32	6 50	
	26	6589, Wisdom, n. p., 2,000	5 00	
M'ch	8	8452, Hornberger & Co	1,711 45	
	14	8432, Miller	1,000	
		8434, "	500	
		8436, "	300	
			1,800	
	15	Error cr. Br. Bank Tenn., Clarksville	87 50	
	20	8469, Kirby & Co	1,783 23	
		8472, Bowling	2,000	
			3,783 23	
July	17	8473, Beaumont	1,500	
		8476, "	2,800	
		8477, "	600	
			4,900	
		Pro. 6776, C. H. Smith, n. p., 13,355.55	8 74	
		6777, " " 8,025.14	8 74	

	31	Union Bank		500
		C. H. Smith	255 14	
		Smyth	62 29	
		Merchants' B'k	50	
				367 43
Feb'y	1	Ex. on London £115 11s		917 77
		6564, Given, W. & Co	1,057 49	
		6632, Murrell & B	1,000	
		6631, C. H. Smith	1,288 65	
	5			3,346 14
		6634, do.	3,000	
		F. W. Smyth	2,500	
		Poindexter & Co	1,403 16	
	6			6,903 16
	"	6567, Given, W. & Co	1,500	
		6637, C. H. Smith	500	
	8			2,000
	10	6567, do.		1,692 15
	11	6570, do.		1,273 75
		6637, do.	1,000	
		do.	1,752 58	
				2,752 58
				143,290 84
1862.				143,290 84
Feb.	12	6739, C. H. Smith, 16 May, 700		685 39
	"	6575, Given, W. & Co		2,000
	13	6640, C. H. Smith	5,000	
		6641, do.	3,000	
				8,000
	17	6647, do.		2,500
	18	6771, Gunther, R. & Co., 8 Aug't		1,245 58
	"	6773, do., 10 June		506 89
	19	6717, C. H. Smith, 29 Ap'l		1,181 39
	20	6648, do.		2,000
	21	6586, Given, Watt & Co		1,600
	24	6657, do.,	3,254	
		6653, Smith	1,200	
				4,454
	25	6654, Murrell & B		500
	26	6590, C. H. Smith		2,159
M'ch	15	3286, D. B. Smith, 10		6,500
		3281, do., 15 Aug't		1,250
		3262, Given, W. & Co., 7 May		1,000
July	17	6722, H. T. Beaumont & Co., July		5,500
		6730, Smythe	2,500	
		6718, do.	2,000	
		6707, do.	2,000	

DR. *Office Planters' Bank Tenn., Clarksville, in ac. with Union Bank of Louisiana.*—Continued. CR.

		6705,	" n.p.,	4,000		8 74		
		6698,	" "	3,000		8 74		
		6703,	" "	1,582.48		8 74		
		6646,	"	500		8 74		
		6692,	"	2,000		8 18		
		6709,	"	1,200		8 74		
		6694,	"	2,000		8 18		
		6706,	"	7,143.04		8 74		
		6782,	"	2,000		8 74		
		6774,	"	1,500		8 18		
		6687,	"	2,000		8 74		
		6712,	"	2,500		8 74		
		6710,	"	1,000		8 18		
		6696,	"	1,000		8 18		
		6716,	"	4,000		8 74		
		6775,	"	2,500		8 74		
		6713,	"	9,190.42		8 74		
		6697,	"	3,255.16		8 74		
		6779,	"	2,500		8 74		
		6712,	"	2,500		8 74		
		6762,	"	3,000		8 74		
		6759,		2,000		8 74		
		6737,		4,000		8 74		
		6714,	Given, W. & Co.,	4,500		8 74		
		6781,		1,600		7 62		
		6769,		1,000		8 74		
		6780,		2,000		7 62		
		6743,		2,703.29		9 30		
		6737,		2,300		8 74		
						119,015 90		192,873 05
10								
1862.						119,015 90	1862.	192,873 05
July	17	To 6729,	Given, Watt & Co.,	2,300		8 74	July 21	By 757 Poindexter & Co	2,633 50
		6725,	"	5,383.22		8 74		
		6778,	"	2,000		7 62		
		6783,	"	2,600		8 18		
	21	6747,	"	2,696.35		9 30		
		6748,	"	2,696.35		9 30		
		6750,	"	2,696.35		9 30		
Aug.	9	6738,	B. H. Wisdom,	4,200		5 09		
		6758,	"	6,000		5 09		
		6732,	"	5,000		5 09		
		6720,	"	7,000		5 09		
		6746,	"	8,500		5 09		
	14	pro. 6772,	"	6,200		5 09		
							6693, do.	2,000	8,500

		6776, C. H. Smith, 13,355.55		5 59			
		6777, do., 8,025.14		5 59			
Oct.	20	C. H. Smith, 34,444		5 09			
		do. 821.13		4 56			
Dec.	8	8441, T. M. Rice	1,000				
		8442, do.	1,500				
		8443, do.	1,500				
		8439, do.	1,000				
		8455, Broaddus	2,000				
		8467, do.	1,000				
				8,000			
1863.							
Jan'y	22d	8454, do.		2,000			
Feb'y	25	8488, Weaver, cas		52,483 65			
Mc'h	5	8456, Broddus		1,000			
Ap'l	9	1787, Given, W. & Co., n. p., 7,757.15		5 62			
May	14	8421, Broddus, T		1,775 30			
	21	6788, Given, Watts & Co., n. p., 7,066.93		5 87			
July	1	8478, C. K. Jones		2,341 70			
		8470, Broddus		500			
Aug.	20	8475, Rob. Bryson on U. B'k		800			
		pro. 6789, Given, W. & Co., 6,607.55, uh		590			
Sept.	10	Am't paid to J. W. McClure, A. Q. M., under order No. 202, 17 Aug., '63, (see protest, Hugh Madden, N. P., 10th Sept., 1863)		7,450 76			
				195,506 55			195,506 55

11 CIRCUIT COURT OF THE UNITED STATES,
FIFTH CIRCUIT AND DISTRICT OF LOUISIANA,
CLERK'S OFFICE.

I certify the foregoing to be a true copy of the original document, numbered 2, offered in evidence by the plaintiff, January 24th, 1871, and on file in the case entitled The Planters' Bank of Tennessee vs. The Union Bank of Louisiana, No. 4065 of the docket of said court.

Witness my hand and seal of said court, at New Orleans, this 4th day of January, 1873.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

(Indorsed:) No. 4065. U. S. circuit court. The Planters' Bank of Tennessee vs. The Union Bank of Louisiana. No. 2. Offered in evidence by plaintiff January 24, 1972.

12 UNITED STATES CIRCUIT COURT,
FIFTH CIRCUIT, DISTRICT OF LOUISIANA,
Clerk's Office, New Orleans, January 4th, 1873.

I, Francis A. Woolfley, clerk of said court, do hereby certify that, in obedience to the annexed writ of certiorari, emanating from the honorable the Supreme Court of the United States, I have made just, true, and correct copies of the documents numbered 2, 3, and 18, referred to in said writ, and annexed the same thereto.

Witness my hand and seal of said court.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

13 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States for the district of Louisiana, greeting:

Whereas, in a certain suit in said circuit court between The Planters' Bank of Tennessee, plaintiff, and The Union Bank of Louisiana, defendant, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"That the clerk of the lower court has omitted to copy into the record certain documents introduced on the trial, and described as documents numbers 3, 2, and 18, all of which are necessary to show the bearing of the instructions asked for in the court below, and the
14 nature of the demand, being in part only for confederate money."

You, therefore, are hereby commanded that, searching the records and proceedings in said cause, you certify what omissions and errors you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, A. D. 1871.

D. W. MIDDLETON,
Clerk Supreme Court U. S.

Issued 30 November, 1872.

(Indorsed:) Sup. Court U. S. Dec. term, 1872. The Planters' Bank of Tennessee, pl'ff in error, vs The Union Bank of Louisiana. Certiorari & return. Filed 11th January, 1873.

Supreme Court of the United States.

THE PLANTERS' BANK OF TENNESSEE,
PLAINTIFF IN ERROR,
vs.
THE UNION BANK OF LOUISIANA.
No. 147.

UNION BANK
vs.
PLANTERS' BANK.
No. 170.

Brief of Counsel of Plaintiff in Error.

FIRST.

This was a suit instituted in the circuit court of the United States for Louisiana by the Planters' Bank of Tennessee against the Union Bank of Louisiana to recover a balance of account amounting to $99,394.01.

The account is averred to have grown out of collections made by the Union Bank for the Planters' Bank, and also from deposits made by the latter with the former.

It is averred, also, in the petition that on the 30th September, 1863, the Planters' Bank drew upon the Union Bank certain drafts of the respective amounts, tenor, and date specially set forth, in the aggregate $86,646.64, which the Union Bank refused to pay, and which went to protest, though at the time the Union Bank had on hand ample funds of the Planters' Bank to pay the same.

It is also averred that on the 15th August, 1865, the Planters' Bank drew another draft on the Union Bank for

$10,331.02, which was also protested for non-payment, and it is claimed that by refusing to pay these four drafts the Union Bank has become liable for interest on the amounts.

See Petition, Rec., pp. 1 and 2.

The drafts referred to, and the acts of protest thereof, are annexed as exhibits to the petition.

Rec., pp. 2 to 7.

By a further petition the Planters' Bank claimed in addition $13,902 for notes collected by the Union Bank for the account of the former.

See Rec., pp. 25 and 26.

The defence set up to this claim was that although in the course of the dealings and transactions between the two banks a large balance was due by the Union Bank to the Planters' Bank, and that the sum was expressed in dollars and cents, yet it was not composed of the lawful currency of the United States; that the remittances made to the Union Bank were in Confederate money; and the drafts forwarded for collection were, to the knowledge of the Planters' Bank, payable in that money; and, in short, that the balance due the Planters' Bank was made up entirely of Confederate money.

Defendants further averred that during the whole time in which the account was running, the States of Tennessee and Louisiana formed part of the Confederate States at war with the United States; that the city of New Orleans was occupied by the forces of the United States, and placed under martial law until the end of the war, and that during that time the Union Bank was compelled by the commander of the United States military forces to pay over to the proper officer of the United States the whole of said balance, which was done under protest.

Further, that the Confederate currency was issued for the purpose of supporting the rebellion, and that the dealings of the Planters' Bank in the said notes was for the purpose of giving credit to them, and that the Union Bank is, therefore, not liable on account of the receipt of such currency.

See Rec., pp. 24, 25, and 28.

The cause was tried on 11th February, 1868, and the jury found a verdict in favor of the Planters' Bank for $113,-296.01.

See Rec., pp. 28 and 29.

On which the court gave judgment, with interest at 5 per cent., (see page 29,) and for a portion of this interest a *remittitur* was entered.

See Rec., p. 32.

A new trial was ordered, except as to $26,752.63, with interest, as that amount was admitted to be due, (see Rec., p. 34,) and the plaintiff was allowed to amend his petition by the amount of certain drafts drawn on the Union Bank by the Planters' Bank, and which the latter erroneously supposed had been paid by the former, so that the plaintiff's claim was increased to $98,855.19.

See Rec., p. 34.

Subsequently, a receiver, D. Weaver, having been appointed to the Planters' Bank by the action of an equity court in Tennessee, he was substituted as the plaintiff in the cause.

See Rec., pp. 36 to 39.

The defendant joined issue on the supplemental petition of plaintiff, and urged the original defence.

See Rec., pp. 39 and 40.

The case was tried before a jury, which gave a verdict in favor of Planters' Bank for $24,713.79, with interest from 15th September, 1863.

Rec., p. 51.

And on this the court gave judgment.

Rec., pp. 51 and 52.

The Planters' Bank then sued out a writ of error, to transfer the record to this court.

See Rec., p. 52.

The Union Bank did the same.

See Rec., p. 53.

THE QUESTIONS INVOLVED.

First. The Planters' Bank does not understand that there is any question involved as to the amounts transmitted to the Union Bank by the Planters' Bank, or as to the dates involved in the controversy.

Second. The questions involved are whether the Union Bank, in collecting drafts or other debts due to the Planters' Bank, and receiving remittances from the latter, all in the circulating medium of the commercial community of the time, became the debtor of the Planters' Bank for the amount, in such circulating medium as was in use at the time demand was made by the latter on the former.

Third. Whether the full amount is due by the Union Bank to the Planters' Bank, represented by the figures expressing the balance payable in the existing circulating medium, or whether the said balance is to be converted into such figures as will express the value of the circulating medium at the date of collection in the circulating medium of the date of demand.

Fourth. Whether a payment of the amount of the bal-

ance, made by the Union Bank under the duress of a military order, to the commanding general of the United States forces at New Orleans, after a demand of payment from said Union Bank by the Planters' Bank, was a discharge of the debt to the latter, the payment to the military commander of the United States having been made in the circulating medium of the so-called Confederate States.

These questions are understood to be raised by the bills of exception taken on the trial of the cause.

See Rec., pp. 41 to 51.

ASSIGNMENT OF ERRORS.

First. The court below erred in charging the jury that the measure of indebtedness of the Union Bank to the Planters' Bank was the value of Confederate currency in national currency at the time the Planters' Bank demanded payment from the Union Bank, and not the value at the time the Union Bank received the Confederate currency and passed the amount thereof on its books to the credit of the Planters' Bank.

See the bill of exceptions of plaintiff on Rec., pp. 50 and 51.

The legal relations between the parties are settled by the clearest principles of law and by the safest authorities.

The Planters' Bank was, with regard to the Union Bank, for all the amounts collected by the latter, a depositor of so much money.

1. The law of Louisiana on the subject.

"The only real deposit is that where the depositary receives a thing to be preserved in kind, without the power of using it, and on condition that he has to restore the identical object."

Louisiana Code, art. 2,934.

"If the things be of the nature of those which are consumed by use, and the depositor has given permission to the depositary to use them, *the contract is no longer a deposit, but a loan for consumption*, and becomes subject to the rules which govern that contract."

Louisiana Code, art. 2,912.

"By the effect of this loan, the borrower becomes the owner of the thing lent, and if it be destroyed, in whatever manner the same may have happened, the loss is on his account."

Louisiana Code, art. 2,882.

See, also, Matthews, Finlay & Co. *vs.* Their Creditors, (10 Louisiana Annual, page 342,) where the court reviewed the relations of a depositor with a bank and held them to be simply those of debtor and creditor.

See, also, to the same effect, Sims *vs.* Bean, (10 Louisiana Annual, p. 346.)

2. The law of England.

See Carr *vs.* Carr, reported in the note (*a*) to the case of Devaynes *vs.* Noble, in 1 Merivale, p. 541.

See Sims *vs.* Bond, 5 Barnwell and Adolphus, p. 389.

See Foley *vs.* Hill, 1 T. J. Phillips, page 404.

And in Potts *vs.* Clegg (16 Meeson & Welby, pp. 327–28) Pollock, C. B., said: "I must, certainly with considerable doubt and diffidence, confess the hesitation of my own opinion, whether there is not special contract between the banker and his customer as to the money deposited, which distinguishes it from the ordinary case of a loan for money." "I could not concur in the judgment of the rest of the court without expressing this doubt, *in which, however, they*" (Parke, Alderson, and Rolfe) "*do not partake*, as they are

of the opinion that money in the hands of a banker is merely money lent, with the superadded obligation that it is to be paid when called for by the draft of the customer."

16 M. & W., 328.

"Money, when paid into a bank, ceases altogether to be the money of the principal; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's is money known by the principal to be placed there for the purpose of being under the control of the banker; it is then the banker's money; he is known to deal with it as his own; he makes what profit of it he can, which profit he retains to himself," &c.

See opinion of Lord Chancellor in Foley *vs.* Hill, 2 House of Lords' cases, p. 36.

See Grant on Banking, pp. 1 to 6.

3. The law of the United States.

"But I understand these deposits to create the relation of debtor and creditor. The bank takes the money in the nature of a gratuitous loan, and charges itself with a debt absolutely due to the depositor. It is not the case of a technical bailment. Should the money be lost without the fault of the bank it would be liable."

Commercial Bank of Albany *vs.* Hughes, 17 Wendell, p. 100.

In the case of the Marine Bank *vs.* Fulton Bank, where the latter, a New York bank, had remitted to the former, a Chicago bank, two notes for collection, which was made. About a year after the collection was made the New York bank made a demand of payment from the Chicago bank, which was refused unless the former bank would accept

Illinois currency, at the time of demand of payment sunk in value to fifty per cent. below par.

In speaking of this collection, the court said: "It was used by the bank in the same manner that it used the money deposited with it that day by city customers, and the relation between the two banks was the same as that between the Chicago Bank and its city depositors. It would be a waste of argument to attempt to prove that this was a debtor and creditor relation."

Marine Bank *vs.* Fulton Bank, 2 Wallace, p. 256.

And the features of this case, as well as the entire reasoning of the court upon them, are strongly analogous to the case now before us.

Story says: "In the ordinary case of deposits of money with banking corporations or bankers, the transaction amounts to a mere loan or *mutuum*, or irregular deposit, and the bank is to restore, not the same moneys, but an equivalent sum, whenever it is demanded."

Story on Bailments, § 88, p. 65.

We reach the conclusion, then, that the relation between the Planters' Bank and the Union Bank was the same as that of the Union Bank to any of its daily city depositors in New Orleans; and that the relation between a bank and its general depositors is the contract of *mutuum* or loan for consumption. The obligation of the Union Bank under this contract is clearly explained by the quotation from Story given above.

See also 2 Kent's Commentaries, p. 573.

The commentators on the articles 1895, 1896, and 1897 of the French code set this subject in a very clear light.

See "Le Droit Civil Expliqué, suivant l'ordre des articles du Code. Troplong. Du Prêt. Paris, 1845." pp. 173, 180.

See Merlin, Répertoire du Jurisprudence, Verbo Prêt, § 2, Art VII, vol. 24, p. 400, edition Brussels, 1827.
See the case of "Hoensbrucke et Femme," Sirey Jurisprudence de la Cour de Cassatoire, tome X, part 2, p. 207.

The conclusion, then, is certain, that the charge of his Honor, the judge of the court below, was erroneous.

The Union Bank was the debtor of the Planters' Bank for the balance of account, and was bound in law to pay the numerical amount of that balance in the money having currency at the date of demand of payment. The jury, under this erroneous instruction, gave a verdict for $24,-713.79, with legal interest from 15th September, 1863.

See Record, p. 51.

Whereas, had the law been correctly been laid down the verdict would have been for the real amount of the balance, viz, $98,855.19, with interest from 25th November, 1863.

See Rec., p. 34, foot.

Second. If, in what has been already said, the relation of the two banks has been properly stated, and the law applicable to that relation correctly defined, the bills of exception taken by the Union Bank, or such of them as apply to the case, are virtually disposed of. They will all, however, be noticed in their order.

No. 1, (see pp. 40 and 41.)

On the first trial, a verdict having been rendered in favor of Planters' Bank, their counsel entered a *remittitur* for a part of the amount. That verdict having been set aside, the *remittitur* went with it. The motion, at the second trial, to withdraw the *remittitur* was supererogatory, but, of course, allowing it did no harm to the Union Bank, which was merely left in the situation it would have occupied had the motion to withdraw the *remittitur* not been made.

No. 2. The Union Bank offered to show by two witnesses, who were presidents of other banks in New Orleans, what had passed in conference between those witnesses and General Banks as to his construction of one of his military orders.

This conference was not made in the presence of the officers of the Planters' Bank, and cannot be binding on them. It was *res inter alios* as to the Planters' Bank.

See the bill of exceptions, Rec., pp. 41 and 42.

No. 3. This bill of exceptions raises a similar question to that of the last. The Union Bank offered witnesses to prove that General Banks allowed the banks in New Orleans to pay to his quartermaster the amounts which the General thought ought to be confiscated, in Confederate moneys. It is plain that such evidence was wholly immaterial to the issue, and inadmissible.

See bill of exceptions, Rec., pp. 42 and 43.

No. 4. The court charged the jury that if the Union Bank received from the Planters' Bank Confederate money, and mixed it with its own funds, and used it in its business, and he bank being subject to the military authorities of the United States, and those authorities having prohibited dealing in Confederate money, that if, when demand was made upon defendants for payment by Captain McClure, that bank (Union Bank) sent out and borrowed Confederate currency, or purchased it, and then paid Confederate money to Captain McClure, that it was not a fair liquidation of their debt to the Planters' Bank.

To this the Union Bank excepted.

See bill of exceptions, Rec., p. 44.

This ruling was clearly right. The Union Bank was the debtor of the Planters' Bank.

The currency issued by the Confederate authorities, who were supreme, and in fact exclusive, being the only currency in existence at the date of the transactions between plaintiff and defendant, could no more have been dispensed with than air and water. Business was by force of an inevitable politico-economical law carried on in that currency, and all contracts made under its standard were lawful, if not in themselves illegal.

See Thorington *vs.* Smith, 8 Wallace, p. 12.

With the currency thus received the Union Bank, as owner of it, could have bought, and no doubt did buy, cotton, sugar, tobacco, or exchange, on all of which profits were realized, such as had been never known in the history of commerce.

The Union Bank "placed this money with its other money; and perhaps in the course of a week all the specific bills it then had on hand were paid out by it. It used it in paying the checks of its depositors, in other words, its debts at par. It buys bills on (London? Paris? Laird? Erlanger?) which it converts into exchange worth a premium," and that an enormous one.

See Marine Bank *vs.* Fulton Bank, 2 Wallace, 257.

If, then, General Banks had any right to confiscate the debt, this legerdemain of buying Confederate money cannot avail the Union Bank as a payment of its debt to the Planters'.

He had no such right, and the very order which is relied upon (see Rec., p. 42) does not show that he intended to confiscate the debt.

No. 5. The Planters' Bank excepted to the charge of the judge which told the jury that if the facts showed that before the issuing of the confiscation order of General Banks the Planters' Bank had demanded payment from the Union

Bank of the balance due, and that the Union Bank had refused to pay, then that any subsequent loss occasioned by payment to Captain McClure would fall upon the Union Bank.

See Bill of Exceptions, Rec., pp. 44 and 45.

This charge was clearly right; the obligation of a bank is to pay on demand moneys deposited with it, and on refusal must be liable in damages; no subsequent event can excuse the refusal to pay.

No. 6. The principle involved in this bill of exceptions, on Record, p. 45, has already been considered.

No. 7. In examining this bill of exceptions it will be found that the defendants desired the court to charge the jury that General Banks had a right to seize the debt due by the Union Bank to the Planters' Bank, and to receive in payment whatever he pleased, though worthless, and that such a receipt was a discharge of the indebtedness of the Union Bank to the Planters' Bank; the court refused to charge that General Banks had a right to receive in payment worthless notes, and to this the Union Bank excepted.

See Bill of Exceptions, pp. 45–47.

No. 8. The bill of exceptions found on pages 47 to 49 of the record involves substantially the same question—the judge refusing to charge that the military authorities could by taking worthless paper for the debt they proposed to confiscate discharge the Union Bank from its obligation to the Planters' Bank.

One of the legal views which may be taken of this question is that the military authority at New Orleans had no power to confiscate the debt.

The confiscating order, on page 42 of the Record, directs the banks of New Orleans to pay over, among other classes of indebtedness, "all moneys in their possession or standing

upon their books to the credit of any corporation, association, or pretended government in hostility to the United States." The only pretext that could possibly have been suggested for confiscating the debt due by the Union Bank to the Planters' Bank was that the latter was chartered by the State of Tennessee, a State proclaimed by the proclamation of the President to be in insurrection against the United States.

The Planters' Bank occupied the same position as any inhabitant of Tennessee.

No law of the United States subjected the property of an inhabitant of an insurrectionary State to confiscation or sequestration merely on the ground of his inhabitancy.

The proclamation of the general who took possession of New Orleans for the United States had declared: "All the rights of property, of whatever kind, will be held inviolate, subject only to the laws of the United States," which "only reiterated the rules established by the legislative and executive action of the National Government in respect to the portions of the States in insurrection occupied and controlled by the troops of the United States."

See The Venice, 2 Wallace, pp. 276–7.

Two acts of Congress had been passed in reference to the property of insurgents:

1. An act to confiscate property used for insurrectionary purposes, approved August 6, 1861, (12 Statutes at Large, p. 19,) the provisions of which are plainly inapplicable to a money debt.

2. "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," approved 17th July, 1862, (12 Statutes at Large, p. 589 *et seq.*,) the fifth section of which made it "the duty of the President of the United States to

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cause the seizure of all the estate and property, money, stocks, credits, and effects of the persons hereinafter named in this section."

If the Bank of Tennessee, then, does not fall within any one of the classes named, this debt due to it by the Union Bank was not liable to seizure.

But it is plain, from reading the list, that a banking corporation could not come within any of the classes specified in the section.

Such an order, then, as this military one of General Banks, was, by its enforcement on the Union Bank, merely an act of illegal violence, but cannot discharge the bank from the payment of its debt to the Planters' Bank.

The court below was clearly right in refusing the instruction asked for in the prayers for charges excepted to.

No. 9. The question involved in this bill of exceptions (see Rec., p. 49) has already been fully discussed. The funds remitted by the Planters' Bank to the Union Bank, whatever they were, were mingled with the funds of the latter, and became its debt to the former, and must be paid in the currency in use at the date of demand.

No. 10. The defendants asked the court to charge that the proceeds of bonds of the Confederate government, sold by the Union Bank and placed to the credit of the Planters' Bank, could not be recovered by the latter from the former.

It has already been amply shown that when a bank receives funds and places them to the credit of a customer the latter has an immediate right to demand payment, and cannot be excused by going back to the character of the transaction out of which the collection arose. The collecting bank understood the business, whatever it was, received the money, and thereby became a debtor for the amount.

The court below should have instructed the jury that the

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Union Bank was bound to pay the Planters' Bank the whole amount of the balance standing on the former's book to the credit of the latter in United States currency.

Respectfully submitted.

THOMAS J. DURANT,
For Planters' Bank.

Supreme Court of United States.

PLANTERS' BANK, TENNESSEE,
v.
UNION BANK, LOUISIANA.
} No. 147.

UNION BANK, LOUISIANA,
v.
PLANTERS' BANK, TENNESSEE.
} No. 170.

Brief of P. PHILLIPS,

of counsel for the Union Bank, Louisiana.

H. Polkinhorn & Co., prs, Washington, D. C.

Supreme Court of United States.

PLANTERS' BANK, TENNESSEE,
v.
UNION BANK, LOUISIANA.
No. 147.

UNION BANK, LOUISIANA,
v.
PLANTERS' BANK, TENNESSEE.
No. 170.

Brief of P. PHILLIPS,

The petition in this case was filed in the Circuit Court, United States, on 11th September, 1866, by the Planters' Bank, claiming of defendant $99,394.01, with 5 per cent. interest on $86,646.64 from 30th September, 1863. On $10,331.02 from 29th August, 1865, and on $2,416.35 from 4th September, 1865, (p. 2.)

On the 15th November, 1866, defendant filed its answer, averring, that the remittances made by the plaintiff, and the collections made for it were in Confederate money at a time when New Orleans was occupied by Confederate forces; that the collections so made were with the assent of the plaintiff; that New Orleans passed under Federal authority, in April, 1862;

that the amount due to plaintiff had been against the protest of defendant, paid over to the military authorities by order of Gen'l Banks, (p. 24.)

On the 11th May, 1867, an amended petition was filed claiming an additional sum of $13,902, (p. 25.)

On the 11th February, 1868, defendant replied with the same answer as was put into the original petition, (p. 28.)

On the same day the case was given to the jury, who returned a "verdict for the amount claimed in full with interest for plaintiff $113,296.01, whereupon a judgment was entered for the amount," (p. 29.)

A motion for a new trial was then made, and while the same was undertermined, and held under advisement, to wit: on 21st March, 1868, the following order was entered—"On motion of Hunton and Clark, attorneys for plaintiff, it is ordered, that a *remittitur* of interest allowed in the judgment in this case be entered, except what is claimed as follows, &c., (see p. 32.)

On same day the attorneys of the plaintiff, on the suggestion that the attorneys of defendant had, during the trial, admitted, in presence of the jury, that there was due to plaintiff $26,752.63 with interest from 25th November, 1863, asked that an execution be issued for this sum, (p. 32.)

On the 4th of April, 1868, the motion was granted "without prejudice to the plaintiff's right to recover the balance under the judgment in the case," (p. 33.)

The motion for a new trial was ordered to be reargued on 7th April following, and on 17th April a new trial was granted "excepting as regards the sum of $26,752.63 admitted by defendants to be due to the plaintiffs" (p. 35.)

On 2d May, 1868, another amended petition was filed which states the amount claimed to be $125,607.82 with interest from 25th Novemlber, 1863, less a credit of $26,752.63, and interest $4,938.68, making in all $31,-691.86, "heretofore paid to plaintiff," (p. 34.)

The case remained in this condition until the 24th January, 1871—two years and ten months—when it was again submitted to the jury, who being sworn to try the case, the court permitted the plaintiff to withdraw his *remittitur* against the defendant's objection, (pp. 41–2.)

A verdict and judgment were rendered on 28 January, 1871, in favor of plaintiff, for $24,713,79 with interest from 15 September, 1863, (p. 51.)

From this judgment the defendant prosecutes its writ of error.

Assignment of Error.

First. The order of the court allowing the plaintiff to withdraw the remittitur, as stated in the 1st bill of exceptions, (p. 41.)

Second. The exclusion of Gaines' evidence offered by defendant to show what construction was given by General Banks to his order No. 202, as stated in the 2d bill of exceptions, (p. 41.)

Third. The exclusion of the evidence of Jonas and Gaines offered by defendant to show the construction of the order No. 202, given by General Banks as to the character of the funds, he required payment to be made in, as stated in the 3d bill of exceptions (p. 42.)

Fourth. The charge given as requested by the plaintiff, that "if when the demand was made by Captain

McLure, the Bank sent out and borrowed Confederate currency or purchased it, and then paid Confederate money to Captain McLure, it was not a fair liquidation of the debt to the Planters' Bank," as shown in 4th bill of exceptions, (p. 44.)

Fifth. The charge given at the request of the plaintiff, that if payment was demanded and refused prior to order No. 202, the loss by payment under that order must fall on defendant, as shown in bill of exceptions No. 5, (p. 44.)

Sixth. The charge given at request of plaintiff, that if the jury were satisfied that defendant was indebted, then this indebtedness was not extinguished by delivery to Captain McLure, of Confederate notes, which had ceased to be of any value at that time, as shown in the 6th bill of exceptions, p. 45.

Seventh. In striking out of the charge prayed by defendant as to the payment made under military orders the words "and it was for them to determine what funds they would receive in payment of the balance on defendant's books to the credit of the plaintiff, as shown by the 7th bill of exceptions p. 46.

Eighth. The refusal to give the charge that if the military exacted the payment and accepted it in these notes, and gave a receipt in full, that this was a discharge as to so much of the plaintiff's demand which had been received in this currency by its authority. The court struck out the words "and accepted payment in Confederate Treasury notes" and told the jury—they were to determine what the payment ought to have been, and that the military authorities had no right to transact with defendant, as shown in 8th bill p. 48.

Ninth. The refusal to give the charge prayed for by defendant, raising the question as to the legality of the

act of remittance of Treasury notes as shown, in the 9th bill of exceptions, p. 49.

Tenth. The refusal to give the charge prayed for by defendant, raising the question of the validity of the act arising out of the remittance of bonds for collection, as shown in 10th bill, p. 50

Eleventh. The allowance of an execution for $26,752,63, before the motion for a new trial was determined.

Argument.

The order for a *remittitur* entered on the application of the plaintiff, was a confession of record, that the amount thus renounced, was not due by the defendant. It was in the nature of a judgment, and the court had no power after the lapse of the term at which it was entered, to set it aside.

It is like a judment on *retraxit*, which is as complete a bar as a judgment on verdict.

Thomasson v. Odin, 31 Ala., 108.

So bringing money into court, being an acknowledgment on record, can never be recovered back, though it afterwards appeared, he paid it wrongfully.

2 Term Rep., 645,

It was equally erroneous to order an execution for a part of the first judgment rendered, while the motion for a new trial was pending and undisposed of. The defendant was thus deprived of his writ of error and supersedeas and was forced to pay the amount of this execution, as this was not a final judgment.

The principal questions are those which arise on the payment made under General Bank's order, and the legality of the dealing in Confederate notes and bonds.

First. As to the order, which is as follows:

Special Order No. 202,

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, Louisiana, *August* 17*th* 1863.

The several banks and banking corporations of New Orleans, will, without delay, pay over to Col. S. B. Holabird, Chief Quartermaster, or to such officer of the Quartermaster Department as he may designate, all money in their possession belonging or standing on their books to the credit of any person registered as an enemy of the United States, or engaged in any manner in the military, naval or civil service of the so-called Confederate States, or shall have been or may be hereafter convicted of rendering any aid or comfort to the enemies of the United States, and all money in their possession or standing upon the books to the credit of any corporation, association, or pretended Government in hostility to the United States. These funds will be held and accounted for, by the Quartermaster's Department, subject to the future adjudication of the Government of the United States.

By command of

MAJ. GEN. N. P. BANKS.

(Signed) RICHARD B. IRVIN,
Assistant Adjutant General.

Had General Banks authority to issue this order? If he had, it would cleary follow that he had the right to place his own construction on it, and to determine when and in what manner the indebtedness so stated should be paid, and his receipt for the amount would operate as

complete a discharge of the debtor, as if it had been executed by the creditor himself. It would also as cleary follow that the evidence offered of several of the Presidents of the Banks of the city to show that the General construed his order to extend to the indebtedness due to the Banks of Tennessee, and that under that construction they had been compelled and did pay over to him the amounts due to the said Tennessee Banks, in Confederate Treasury Notes was improperly rejected. This involves the 2d, 3d, 4th, 5th, 6th, 7th and 8th bills of exceptions.

General Banks was in command of the Department, and the only representative of the constitutional commander-in-chief.

The order was issued while the war was flagrant. In the absence of any prohibitory act of Congress, or order from his superior, he was vested with the full power of doing all that the laws of war permitted.

Whatever the chief executive could do in those portions of the country, which had fallen by conquest under his dominion, he could do. Courts were established in some of these places under executive authority, and in others, by military commanders, which exercised the right to pass upon personal and property rights, and its judgments punishing offences, and transferring title to property have been undisturbed.

The regular judicial tribunals were subordinated to military control, and they heard and determined such cases only as that control permitted.

This condition of things was fully admitted by the Chief Justice, in his charge to the jury in North Carolina, in speaking of the condition of things even *after hostilities had terminated.*

"When active hostilities ceased in 1865, national military authority took the place of all ordinary civil jurisdiction, or controlled its exercise; all courts, whether State or national, were subordinated to military supremacy, and acted, when they acted at all, under such limitations, and in such limitations, as the Commanding General, under the directions of the President, saw fit to subscribe. Their process might be disregarded, and their judgments and decrees set aside by military orders. Under these circumstances, the Justices of the Supreme Court allotted to the circuits which included insurgent States, abstained from joining the District Judges in holding the Circuit Courts. Their attendance was unnecessary, for the District Judges were fully authorized by law to hold the Circuit Courts without a justice of the Supreme Court, and to exercise complete jurisdiction in the trial of all criminal, and almost all civil cases. It was unnecessary for another reason; the military tribunals at that time, and under existing circumstances, were competent to the exercise of all jurisdiction, criminal and civil, which belongs under ordinary circumstances to civil courts. It being thus unnecessary, the Justices thought that their attendance would be improper and unbecoming. They regarded it as unfit in itself, and injurious in many ways to the public interests, that the highest officers of the Judicial Department of the Government should exercise the functions under the supervision and control of the Executive Department."

See Extract from Chief Justice Chase's address, in 3 Abbott's National Digest, in note at page 142.

The Supreme Court of Louisiana, in an action of nullity, brought on a judgment rendered by a judge holding his appointment under military authority, say,

"At the time of the rendition of this judgment,

sought to be annulled, the city of New Orleans was under the complete dominion and absolute control of the Federal military authorities. The Government established by them recognized no law but such as met its unqualified sanction and approval. It not only prescribed the rule of conduct for the inhabitants of the conquered city, but established a judiciary, appointed judges, whose judicial functions were exercised under its supervision."

Lanfear *vs.* Mestier, 18. An. 506.

No higher power could be exercised by a belligerent than that of appointing tribunals for the administration of justice. In carrying on a war the commander waits not for acts of Congress. His object is conquest, and whatever is necessary to weaken the enemy and cause his submission, and not in violation of the humane principles of modern warfare, lies within his discretion; and that discretion cannot be controlled, and his action cannot be held invalid by municipal courts.

In a case before Lord Tenterden, in 1830, on appeal from the judgment of the Supreme Court of Bombay, it it was shown that the property was seized in a recently conquered province, long after it had been conquered, and at a distance from actual hostilities. The judgment of the Bombay Court was founded on these circumstances, and on the further fact that at the date of the seizure, courts of justice were exercising their authority.

But in the Appellate Court his Lordship said,

"We think the proper character of the transaction was that of hostile seizure made, if not *flagrante*, yet, *nondum cessante bello*, and consequently the municipal court had no jurisdiction to adjudge upon the subject; but if any thing had been done amiss, recourse could only be had to the Government for redress."

Elphistone v. Bedreechund, 1 Knapp, Priv. Coun. Rep., 360–1.

The right of the conqueror to acquire title to possess and alienate both *immovable* and *incorporeal* property, is treated of by Phillimore, 3 vol., 396. Speaking of the case of payment of a debt to a conqueror, subsequently to which the former sovereign is restored he puts these questions—Has the restored government the right to demand of the debtor the payment which he has discharged during the *interregnum?* Does it follow that if this goverment had the right to exact the debt, *it was the debtor's duty to pay it?* Are the two propositions convertible? Or, if so, may not the original creditor demand a second payment?

The author then quotes Bynkershoek, to the effect that the debt is *satisfied and extinct;* and this he says is unquestionably the opinion of the greater number of the most able jurists; the conclusion from the analogies to be drawn from the Roman law, and the international practice as shown by treaties.

In order, however, to uphold a payment to a mere *de facto* government, founded in conquest, certain conditions are required. The debtor must show—

1st. That the sum was actually paid.

2d. That it was due at the time it was paid.

3d. That the payment had not been delayed a *mora.*

4th. That the payment had been compulsory—the effect of a *vis major.* 696–7.

With these proofs payment of debts to such a government would be held to extinguish the claim of a creditor; for the power to control those subjected to it by conquest is admitted. The people, thus subjected, have no means of resistance to its authority, and when they act in good faith *vis major* constitutes their protection.

But these conditions are not applicable to a case where the payment has been made to the authorities of the rightful government. There is here no distinction between a mere Conqueror and a Regent, or between a government *de facto* and *de jure*.

The order of General Banks has been approved by his government; his receipts have been accounted for. If, in the exercise of his power, "anything has been done amiss," (we use the language of Lord Tenterden,) "recourse could only be had to the government for redress."

The Government has passed laws protecting its military officers for acts done during the war. It has thus interposed itself, in this case between the parties to the controversy. If the order was originally illegal, the Government has protected the officer from suit. It has made his acts its own, and if wrong has been inflicted, the creditor can look only to the good faith of Congress.

Thus—The 4th Section of the act of 3d March, 1863, makes it a complete defense to any action brought for a seizure of property when it is shown, that it was done under "any order of the President, or under his authority," OR, "under color of any law of Congress;" and this may be shown by special plea, or under the general issue. (12 Stat. 756.)

By the act of 11th May, 1866, the provision of this 4th section is extended to any seizure or other act done under any "order written or verbal, general or special, of any military officer of the United States, holding the command of the Department, district or place, in which such seizure was made. (14 Stat. 46.)

The 6th section of the act of 17th July, 1862, authorized the seizure of "property, moneys, stocks and *credits*." (12 Stat. 591.)

The question whether *private debts* are properly sub-

jected to seizure, has created much discussion. The case is often provided for by treaty. The 10th article of the treaty of 1794, with Great Britain, (8 Stat., 122) declares they shall not be "confiscated or sequestered." The articles of "Camillus," written by Hamilton in vindication of this article, (works of Hamilton, 7 Vol.,) speak of the violence with which it had been attacked.

His vindication of the principles involved, proceeds on the ground, that whenever a government grants permission to a foreigner "to bring his property within its territory, it tacitly promises protection." How, he asks, can it be reconciled with the idea of a trust, to take the property from its owner, when he has personally given no cause for the deprivation? 232-3.

Again, "where the persons or goods of an enemy are found in our country, there is a reliance upon our hospitality and justice; there is an express or implied safe conduct; the individuals and their property are in the custody of our faith. To make them a prey, is therefore to infringe every rule of generosity and equity; it is to add cowardice to treachery," (335.)

The reason, therefore, for the denial of the right of such seizure between two independent governments on the breaking out of war, would seem to have no application to a war waged for the suppression of a rebellion, and we may further add, that notwithstanding the strong language of "Camillus," the decisions of this court are decidedly in favor of the right, even as between foreign nations.

Brown v. U. S., 8 Cr., 110.

As we have seen, payment to an usurped government such as that of the Confederates is held good on the principle of irresistible force. At the present term this

court decided, that the United States could not recover against one of its officers who had paid over to the Confederate authorities the amount due to the former, for the payment had thus extinguished the indebtedness.

"That overruling force (say the Court) arising from inevitable necessity, or the act of the public enemy, is a sufficient answer for the loss of public property, when the question is considered in reference to an officers' obligation arising merely from his appointment, seems almost self evident, and as it regards this question, it is difficult to perceive, any distinction between the loss of one kind of property and another. If the property belongs to the Goverment, the loss falls on the Government; if it belongs to individuals it falls on them." (U. S. vs. Thomas *et al.*)

In the case before us it can make no difference whether the defendant held the plaintiff's funds on special or general deposit; in other words whether as bailee or debtor.

The order was not directed to obtain any property or funds of the defendant, but to obtain the property or funds of the plaintiff. To enforce now by judicial sentence a second payment from defendant, is to shield him intended to be wounded, and wound the party intended to be shielded.

If General Banks was in this transaction—a naked trespasser—then the payment to him affords no protection. If he has acted in the proper discharge of his duties as an officer, or the Government has ratified his acts, and assumed their responsibility, his receipt for the money is as full an acquittance, as if it had been given by the creditor himself.

The authority to issue the order was fully admit-

ted by the Judge below in his several charges, but strange to say, he insisted, that the General had no authority "to determine what kind of funds he would receive in payment of the balance due to plaintiff." Again he told the jury, "that *they* were to determine what the payment ought to have been, and that the military authorities had no right to transact with the defendant." pp. 46, 48.

In other words the General had the right to demand the payment, but as to the mode of payment— he was entirely without authority; and it was for the jury to say eight years after the order for payment had been executed, "*what the payment ought to have been*" and "*in what kind of funds.*"

Equally strange is the charge given at request of plaintiff, that "if when the demand was made by Capt. McLure, the Bank sent out and borrowed Confederate currency, or purchased it, and then paid it to McLure, it was not a fair liquidation of the debt to the Planters' Bank." p. 44.

That is to say, McLure's receipt failed to protect defendant if the money paid by it, was borrowed or purchased for the purpose.

In 1806 the French took possession of Hesse Cassel, and the debts, due the Elector were seized by Napoleon. In 1813 the Elector was restored to his dominion, when the question was raised whether his debtors were discharged by their payments. This question being finally referred to the German University, it was decided that the acquittances were valid, whether the debts were paid in full or not, as Napoleon was invested with the full rights of a creditor. This, it is to be observed, is a decision made after a restoration, and when the doctrine of *postliminium* might be invoked.

Phillimore, 716.

Some stress seems to have been put on the matter of demand of payment as affecting the question of liability.

The record contains no evidence on this head other than the protested bills annexed to the petition. These are dated 30th September, 1863, and the protest attached show that they were not honored because the fund had been seized by order of General Banks.

The petition does not state when the demand was made, and all that we have on this head, is a recital in the defendant's bill of exception, that evidence had been offered, tending to prove that the demand had been made *before payment.* In addition to this we have the recital in the plaintiff's bill, that the "plaintiffs demanded payment of the *balance due* in August, 1863."(p. 50.)

Assuming therefore, there was evidence that the demand was made *before payment*, we can at the same time assert that there is none to show that it was made *prior to the order* on the 17th August, 1863.

As a part of the history of the military government of New Orleans, we may refer to the following order:

HEADQUARTERS OF THE GULF,
NEW ORLEANS, 17*th October*, 1862.
[General Orders, No. 82.]

All persons holding powers of attorney, or letters of authorization from, or who are acting merely for, or tenants of, or intrusted with any money, goods, wares, property, or merchandise, real, personal, or mixed, or any person now in the service of the so-called Confederate States, or any person not known by such agent, tenant, or trustee, to be a loyal citizen of the United States, or a *bona fide* neutral subject of a foreign government, will retain, in their own hand, and until further orders, all such monies, goods, wares, merchandise, and property, and make an accurate return of the same to David C. G.

Field, the Financial Clerk of the Department, upon oath, on or before the 1st November, next. Every such agent, tenant, or trustee failing to make true return, or shall pay over and deliver any such monies, goods, wares, merchandise, and property to or for the use, directly or indirectly, of any person not known by him to be a loyal citizen of the United States, without an order from Headquarters, will be held personally responsible for the amount so neglected to be returned, paid over, or delivered. All rents due or to become due by tenants of property belonging to persons not known to be loyal citizens of the United States, will be paid as they become due to D. C. G. Field, Esq., Financial Clerk of the Department.

By command of

MAJOR GENERAL BUTLER,

GEO. C. STRONG, *Chief of Staff.*

The existence of these orders or either of them was a sufficient justification to the defendant to refuse paying to the plaintiff—But the refusal to pay a debt incurs no other damage than such as is measured by interest, (Civil Code, 1929.)

Assuming that the plaintiff was entitled to recover, the charge to which he excepts, gives all he was entitled to.

It was certainly not the duty of the defendant to seek the plaintiff, nor was the Bank authorized to make remittances until called upon to do so. Neither law nor custom required any thing more than it should stand ready to pay when and how the creditor should direct.

Second. Can the dealing of these Banks in Confederate notes and *bonds* thus stimulating their circulation and

enhancing their value, be the foundation of a valid contract enforceable in the courts of the United States ?

The grounds of necessity which induced the court to declare that this currency constituted a sufficient consideration for a note in the case of Thorington v. Smith, do not cover this case. There was certainly here no necessity to deal in bonds, given for the purpose of carrying on the rebellion.

It has been repeatedly held by the Supreme Court of Louisiana, that this currency could give rise to no valid agreement. That all agreements based on such consideration were entirely null and void.

The constitution of 1868, declares that no recovery should be had on such agreement. But the Supreme Court held them invalid prior to the adoption of this constitution, and continues to hold them invalid, independent of the constitutional provision.

Cases have been brought here under the 25th section from that court, on the ground that a contract had been impaired, and they have been dismissed, because it was not shown that the decision was placed upon any law subsequent to the date of the contract.

The State Court would have given judgment for defendant in this case on the principles announced, and this court would have refused to take jurisdiction of it.

If by the law of the State all such agreements were illegal when entered into, (its Supreme Court so declares,) must not the rule of decision be the same in the courts of the United States administering justice in said State? Can there be two different rules of decision in the same State?

As State laws are required to be regarded as "rules of decision," it is evidently proper that the State judicial

tribunals should ascertain by construction their true meaning; and when by decision in their courts this is done, and the rights of the citizens subjected to this interpretation, every reason of propriety and justice, and all the requirements of harmony and equality, demand that the Federal Courts in the States should be governed in their adjudication by the same construction as is enforced in the the State Courts.

The decisions of the State Court are referred to in the opinion of this court, in the case of the West Tennessee Bank v. Citizens' Bank, for moneys deposited with, or collected by the latter for the former. A case in almost all respects like the present. The Supreme Court gave judgment for defendant, and on writ of error under the 25th section, this court said—

"The Supreme Court founded its judgment alike upon the Constitutional provision and prior adjudication. Those adjudications *are numerous and conclusive on the subject.* The Constitution only declares a *settled pre-existing rule of jurisprudence in that State.* The result would have been necessarily the same if the Constitution had not contained the provision in question."

13 Wall. 432.

We submit that the judgment should be reversed with directions to dismiss the petition.

P. PHILLIPS,

of Counsel for the Union Bank, Louisiana.

1*st March*, 1873.

Supreme Court of the United States.

DECEMBER TERM, 1872.

WRITS OF ERROR TO CIRCUIT COURT OF UNITED STATES FOR DISTRICT OF LOUISIANA.

THE PLANTERS' BANK, OF TENNESSEE,
Plaintiff in Error,

v.

THE UNION BANK, OF LOUISIANA,
Defendant in Error,

AND

THE UNION BANK, OF LOUISIANA,
Plaintiff in Error,

v.

THE PLANTERS' BANK, OF TENNESSEE,
Defendant in Error.

} Nos. 147, 171.

There being a statement of the case presenting the questions involved, and the manner in which they are raised, it is deemed sufficient to add the following:

BRIEF OF THE ARGUMENT IN No. 147.

The plaintiff's bill of exception, pp. 50, 51, shows that the court did right in refusing to instruct the jury as requested, and in giving the instruction that was given, *Robinson* v. *Noble's Admis.*, 8 Peters, 198. For as this court has said although when the banker specially agrees to pay in bullion or in coin, he must do so, or recover

in damages for its value, yet, "if one agrees to pay in depreciated paper, the tender of that paper is a good tender, and in default of payment the promiser can recover only its market and not its nominal value," *Thompson* v. *Riggs*, 3 Wallace, 678.

The court may take judicial notice of what is known to all the world besides,—of what is part of the history of the country,—the kind and quality of the currency at the time of the transactions now in question, *Gay* v. *Gold*, 13 Wallace, 362. It must be considered that the contract was with reference to 'Confederate currency' as a standard of value, and was intended to be performed in that kind of currency, *Lohman* v. *Crouch &c.*, 19 Grat., 341; *Thorington* v. *Smith*, 8 Wallace, 13; *Robinson* v. *Internat. Life Ass.*, 42 N. Y., (3 Hand.,) 64. Indeed the very exception now under consideration proceeds upon the concessum "that defendant received *Confederate currency*." It raises the question merely as to "the measure of the indebtedness"—whether regard is to be had to its value at the date when such currency was received and used by defendant, or its value at the date of demand of payment. We insist that the measure of damages is the value of the Confederate currency at the time for payment, *Kirtland* v. *Molton*, 41 Ala., 589; *Dearing's Adm'r.*, v. *Rucker*, 18 Grat., 426; *Lohman* v. *Crouch &c.*, 19 Id., 341.

The position of the other side is that "the relation between a bank and its general depositors is the contract of *mutuum* or loan for consumption," p. 8 of brief. Suppose it to be so, the depositors are only entitled to the same kind and quality, * and of that kind only to

* The code of Louisiana provides, as follows:
Art. 2881, "The loan for consumption is an agreement by which one person delivers to another a certain quantity of things which are consumed by the use, under the obligation by the borrower, to return to him as much of the same kind and quality."

the same numerical sum. It is so both under the code Napoleon * and the code of Louisiana.† The latter provides, as follows:

Art. 2891. "The borrower is obliged to restore the money lent in the same quantity and condition and at the place and time agreed on. If no spot has been fixed on for the restitution it must be made at the place where the loan was made."

Art. 2892. "If it be impossible for him to fulfil his engagement, he is bound to pay the value of the things lent, taking into consideration *the time and place where they ought to have been returned*, according to agreement.

If the time and place have not been regulated, the payment is made according to the price which the thing is worth at *the time and place where the demand is made.*"

Thus according to the law of Louisiana, whatever be the diminution in value of the currency, the debtor is bound for no more of such currency, than the same numerical sum; and when the debt is paid in lawful money of the United States, the payment is to be according to the price which such currency is worth at the time when the demand is made.

This is consistent with the common law rule that the banker is not in default until payment has been demanded. *Downes* v. *Phœnix Bank of Charleston*, 6 Hill, 299. The duties of the parties are reciprocal; the one to pay on demand, the other to make such demand, before a right of action accrues. *Watson* v. *Phœnix Bank*, 8 Metcalf, 221.

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*Art. 1895. "The obligation, which results from a loan in money is always of that numerical sum only set forth in the contract. If there have been an augumentation or diminution in the currency before the period of payment, the debtor must return the nominal sum lent, and is only bound to render such sum in the specie having currency at the time of payment."

†Art. 2884. "The obligation which results from a loan of money, can never be more than the numerical sum mentioned in the contract. If there has been augumentation or diminution in the value of the specie before the time of the payment, the debtor is bound to return nothing more than the numerical sum which was lent to him, in such specie as has currency at the time of the payment."

Art. 2886. "If provisions have been lent, whatever be the increase or *diminution* of their price, the debtor is still bound to return the same quantity and quality, and he is bound to return no more."

The date of the demand must be looked to in respect to the measure of indebtedness, whether the Confederate currency received for plaintiff had increased or depreciated in value: in the latter case, as in the former the measure of the indebtedness must be in respect to the quantity or amount of Confederate currency received, and must be the value of that quantity or amount in the lawful money of the United States at the date of demand.

This rule is not attended with any hardship on the depositor. For having a right to make a demand as soon as he pleased, he might make a demand soon after the receipt of the Confederate currency if he thought there was greater danger of its falling than rising in value. Whereas the rule contended for on the other side would be attended with great hardship on the indebted bank which might see a constant depreciation going on, and yet, according to the usage of business, would not pay until demand.

Nor is this rule inconsistant with the language in *Foley* v. *Hill*, 2 Ho. of L., 36, that the banker is "to return an equivalent by paying a similar sum to that deposited with him when he is asked for it." If there has been deposited with him a certain sum in coin, he, when asked for it, returns an equivalent by paying a similar sum in coin without any question as to the difference between the value of coin when received and its value when demanded. So likewise in this case wherein there has been deposited with a banker a certain sum in Confederate currency, the difference between the value of such currency when received and its value when demanded is not to affect the amount to be paid, but the payment is to be merely of a sum in such currency similar in amount to that deposited, or if because of the illegality of such currency, the payment is to be in lawful

money of the United States, then the payment is to be of no more of such lawful money than is equal to the value of that sum in such currency at the time of the demand.

On these and other grounds it is insisted that there is no error of which the plaintiff has a right to complain, and that the judgment should be affirmed unless there be error to the injury of the defendants.

Assignment of Errors relied upon in No. 170 *; and brief of argument on this writ of error.*

Error is asserted and intended to be urged in the several opinions of the court mentioned in the following bills of exceptions, to wit: No. 1, p. 40; No. 2, p. 41; No. 3, p. 42; No. 4, p. 44; No. 5, p. 44; No 6, p. 45; No. 7, p. 47; No. 8, p. 47; No. 9, p. 49; and, No. 10, p. 50.

The *remittitur*, (p. 32) is the subject of bill of exceptions, No. 1, pp. 40, 41. The judge plainly erred in giving leave to withdraw and cancel the *remittitur*. And the error is not gotten over by the argument on the other side, (p. 9 of brief,) that the "verdict having been set aside, the *remittitur* went with it." That argument proceeds upon a misconception of the operation of a *remittitur*, (2 Arch Pract., 2 Q. B., p. 1118 of Lond. Edi., 1838,) which a party is no more at liberty to withdraw and cancel than he would be at liberty to withdraw and cancel a deed of release or a *retraxit Minor, &c.*, v. *Mechanics' Bank*, 1 Peters, 83, *et seq.* The *remittitur* here has the same effect as if it had been written out according to the form in England, which would be as follows: "The plaintiff freely here in court remits to the defendant all interest allowed in the judgment except interest on the

following sums," (the sums excepted in the *remittitur*:) "Therefore, let the defendant be acquitted of such interest so remitted as aforesaid, and go thereof without day." It is a final giving up of such interest by matter of record. *Bowden* v. *Horne*, 7 Bingh., 723, 20 Eng., C. L. It is plain then that the *remittitur* is not to be disregarded. *Flower &c.*, v. *Williams*, 1 Louis 28. Even if the plaintiff had been entitled to the interest, yet it is clear that a party "may renounce his rights or any part of them." *Pargoud* v. *Morgan &c.*, 2 Id. 102; *Mead &c.* v. *Buckner*, Id. 286.

On the other errors assigned, a brief of the argument is filed by Mr. PHILLIPS.

CONWAY ROBINSON,
with
P. PHILLIPS.
For the Union Bank.

February 28, 1873.

4 Robinson (La) 346

17 Annual 263
Code of 186 —

21 annual, 341 —

5. Robinson — 447
9. Sutton — 296 —

5. Wallace
Thompson Kiff 678

Whitney was Pow

— 591 —

13 Wallace p 432